# CANADIAN RAILWAY OFFICE OF ARBITRATION

# CASE NO. 668

Heard at Montreal, Tuesday, September 12, 1978

Concerning

## BRITISH COLUMBIA RAILWAY

and

## UNITED TRANSPORTATION UNION (T)

**DISPUTE:**

Claim for General Holiday Pay for Remembrance Day in 1977, in addition to the monthly guarantee for November 1977, in favour of Conductor W.C. Thompson.

**JOINT STATEMENT OF ISSUE:**

During November 1977, Conductor Thompson was assigned to freight service on the Squamish Subdivision which produced less in earnings than the $1,393.50 per month as provided by an Arbitrator's Award in respect of monthly guarantees for trainmen in Freight Service.

Conductor Thompson was entitled to General Holiday pay for Remembrance Day in November.

The Railway used the General Holiday payment toward making up the $1,393.50 paid Conductor Thompson for the month of November.

Conductor Thompson claimed payment for the General Holiday in addition to the monthly guarantee.

The Railway declined payment of the General Holiday claim.

| FOR THE EMPLOYEE: | FOR THE COMPANY: |
|---|---|
| **(SGD.) G. C. W. BOWLES** | **(SGD.) T. TEICHMAN** |
| **GENERAL CHAIRMAN** | **MANAGER – LABOUR RELATIONS** |

There appeared on behalf of the Company:

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| H. Collins | – Supervisor, Labour Relations, Vancouver |
| B. M. McIntosh | – Labour Relations Assistant, Vancouver |

And on behalf of the Brotherhood:

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| G. C. W. Bowles | – General Chairman, Vancouver |
| R. T. O'Brien | – Vice President, Richmond |

## AWARD OF THE ARBITRATOR

The issue in this case is whether, under the applicable collective agreement provisions, it is proper to take into account the general holiday pay to which an employee is entitled, in determining whether or not he is entitled to a payment (and if so, in what amount), under the guarantee provisions.

The general provision for a monthly guarantee was set out in Article 208 (e) of the collective agreement, which was as follows:

> **(e) Guarantee**
>
> Assigned mixed, wayfreight, switcher and unassigned crews will be guaranteed 2,800 miles for the month of February and 3,000 miles in any other calendar month, or portion of a month pro rata, inclusive of all classes of service. When the regular monthly mileage is less, such crews may be used in other service to make up guarantee without constituting a run-around. Crews working only part of a month will be credited with mileage made at the rate of 100 miles for each day regularly set up but not in excess of 2,800 miles for the month of February and not in excess of 3,000 miles in any other calendar month.
>
> Trainmen who only work a portion of a month on any run will be paid their full proportion of the compensation provided for such run under this schedule:
>
> EXAMPLE
>
> | | |
> |---|---|
> | Guaranteed mileage for the month of February | 2,800 miles |
> | Actual miles made on the assignment | 2,600 miles |
> | Total Guarantee accruing | 200 miles |
>
> | | |
> |---|---|
> | Trainman A makes | 12 trips |
> | Trainman B makes | 4 trips |
> | Total trips made for month | 16 trips |
>
> Trainman A is entitled to 12/16 of the guarantee of 200 miles Trainman B is entitled to 4/16 of the guarantee of 200 miles.
>
> The same formula to apply for any calendar month when guarantee is 3,000 miles.

This provision is referred to in the award of a board of arbitration established between the parties to deal with the determination of certain matters relating to wages and working conditions. That board, under the Chairmanship of Mr. O.B. Shime, Q.C. issued an award on July 19, 1977, which included the following:

> All employees currently employed on a regular basis who are affected by this award are to receive a minimum monthly commensurate with the guarantee contained in Article 208 (e).

Later, the arbitration board, pursuant to a procedure contemplated in its award, prepared certain contract language necessary to the implementation of the award. The clauses thus prepared included the following:

> Notwithstanding the aforesaid article trainmen employed on a regular basis as regularly assigned and unassigned trainmen in freight service shall be guaranteed the reasonable opportunity to earn $1,393.50 per month for conductors and $1,233.60 per month for brakemen save and except for February where this guarantee shall be $1,300.60 for conductors and $1,151.36 for brakemen. This guarantee shall not apply to spare trainmen who are not employed on a regular basis.
>
> Regularly assigned and unassigned crews will not be reduced and spare trainmen will not be increased for the purpose of avoiding the aforesaid guarantee.

In providing, in its award, that employees enjoy a guarantee "commensurate" with that contained in Article 208 (e), the board of arbitration intended, it seems clear, to retain the general nature of the guarantee while permitting its restatement in dollar, rather than mileage terms. The language later prepared by the board gives effect to this. The question of what sort of payments shall be included or excluded in calculating any amount that might be payable under the guarantee appears not to have been in contention, and not to have been dealt with by the board of

arbitration. The net effect, then, is that the guarantee provided for in Article 208 (e) is continued, although expressed in somewhat different terms.

In **Case No. 170** I made the following general remarks relating to guarantees. These were repeated in **Case No. 222.** They are as follows:

> In the absence of some express provision in the agreement, it is my view that holiday pay would naturally be included in the total of an employee's earnings, and that any payment necessary to bring him up to the guaranteed level would be determined having regard to this total. Clearly, every employee entitled to holiday pay gets the benefit of this credit, just as does every employee who actually works.

The guarantee in Article 208 (e) is expressed in terms of miles. This had, indeed been the case with respect to the guarantee dealt with in **Case No. 222**, and is common on the railroads. The language prepared by the board of arbitration in this case is in dollar terms, and guarantees earnings. This does not, however, affect the general proposition that holiday pay is included in earnings unless there is some specific provision excluding it.

The language governing the guarantee in the instant case does not exclude holiday pay from the amounts to be considered in making up the guarantee. The Union argued that this was an oversight, since employees in passenger service benefit from a guarantee which is "exclusive of overtime, switching, detention and General Holiday payment". No such exclusion appears in Article 208 (e) or in the language prepared by the arbitration board. It does not appear that this difference can properly be described as an "oversight", the two provisions differing in many respects. If a conclusion is to be drawn from the difference in the two provisions, it would be that where one excludes general holidays (as well as several other heads of payment which relate to time actually worked), the other does not. In any event, an arbitrator has no jurisdiction to correct what may be thought to be oversights in the collective agreement. It may also be borne in mind that, as the board of arbitration noted, there are many differences as between the several groups of employees and classes of service covered by the collective agreement.

It is the language of the collective agreement which must govern, and in the instant case that language does not support the exclusion of holiday pay from the calculation of an employee's earnings in any month. Accordingly the grievance must be dismissed.

**(signed) J. F. W. WEATHERILL**
**ARBITRATOR**