CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 823

Heard at Montreal, Tuesday, April 14, 1981

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

DISPUTE:

Claim by Messrs. S. Bonneau and P. Dupont for 8 hour overtime for August 4, 1980 less overtime paid.

JOINT STATEMENT OF ISSUE:

Under date of July 29, 1980 above employees were advised that their assignments for August 4, 1980, a General Holiday, were cancelled. At the same time they were advised that their services would be required on August 4, 1980 one to work trains No. 522 and 522 North and one to work trains No. 907 and 937.

Mr. S. Bonneau was on duty 3 hours and was paid 3 hours' overtime. Mr. P. Dupont was on duty 6 hours and was paid 6 hours' overtime.

The Union contended that as it was known in advance that service was required on these assignments that they should not have been cancelled and claimed accordingly.

The Company denied the claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) W. T. SWAIN	(SGD.) J. B. CHABOT
GENERAL CHAIRMAN	GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company:

J. Cuin	– Supervisor, Labour Relations, Montreal
D. Cardi	– Labour Relations Officer, Montreal
R.L. Vachon	– Rail Terminal Supervisor, Farnham
J. H. Blotsky	– Assistant Supervisor, Labour Relations, Montreal

And on behalf of the Brotherhood:

W.T. Swain	– General Chairman, Montreal
D. Herbatuk	– Vice General Chairman, Montreal

AWARD OF THE ARBITRATOR

While advised that their regular assignments on the holiday in question would be cancelled, the grievors were told that they would be called in on a "one call" basis on that day to perform certain work. It was not anticipated that they would work a full shift, nor did they; Mr. Dupont was on duty as long as he was only because of certain unexpected circumstances.

The cancelling of regular assignments on a holiday is not in question. What is in issue is the payment to be made for work performed (apart from any question of holiday pay) to employees such as the grievors, who were told they would be subject to call, and who were called in for a certain time. That is, it is contended that the grievors' particular assignments should not have been cancelled, because they were in fact required to work, and that they were under the direction and control of the Company for the full eight hours of their shift.

In fact the grievors were under the direction and control of the Company in the usual sense of that expression only while they were in fact at work, although they were subject to call to work up until the time they were called.

The matter of payment for work on a general holiday is dealt with in Article 13.9 of the Collective Agreement, which is as follows:

> **13.9** An employee paid on an hourly, daily or weekly basis who is required to work on a general holiday shall be paid, in addition to the pay provided in Clauses 13.6 and 13.7 of this article, at a rate equal to one and one-half times his regular rate of wages for the actual hours worked by him on that holiday with a minimum of 3 hours for which 3 hours' service may be required, but an employee called for a specific purpose shall not be required to perform routine work to make up such minimum time.

Being advised that he will be called to work on a holiday is not the equivalent of actually working on the holiday. Of course, being subject to call inhibits to a greater or less extent an individual's enjoyment of the day; it is not, however, the same thing as actually working. Apart from this, however, the Collective Agreement sets out as a qualification for holiday pay that (subject to certain exceptions), an employee must be "available for duty" on the holiday (Article 13.4(b)). Even more significantly (and decisively, for this case), Article 13.9 provides for payment at overtime rates "for the actual hours worked" by an employee on a holiday. Such payment was made to the grievors. Where employees, such as the grievors, are indeed required to work on a holiday, advance notice must be given (Article 13.4(b)), and such notice was given in this case. That notice does not affect the payment provision set out in Article 13.9, which was followed.

For the foregoing reasons it must be concluded that the grievors were paid in accordance with the provisions of the Collective Agreement. The grievance is, therefore, dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR