

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 834

Heard at Montreal, Tuesday, May 12, 1981

Concerning

CANADIAN NATIONAL RAILWAYS

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineer W.D. McClurg, Toronto, for General Holiday pay, Good Friday, April 13, 1979.

JOINT STATEMENT OF ISSUE:

Locomotive Engineer W.D. McClurg was absent due to illness from November 23, 1978 until August 31, 1979, the effective date of his retirement.

A general holiday, Good Friday, occurred on April 13, 1979 and Locomotive Engineer W.D. McClurg submitted claim for general holiday payment in the amount of 416 miles at passenger rates under Article 112.3(a) of Agreement 1.1.

The Company declined payment of the claim.

FOR THE EMPLOYEES:

(SGD.) P. M. MANDZIAK
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) S. T. COOKE
VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

R. Birch	– System Labour Relations Officer, Montreal
M. Delgreco	– Regional Labour Relations Officer, Toronto
P. L. Ross	– Coordinator Transportation – Special Projects, Montreal
J. M. Letwin	– Assistant Superintendent, Capreol

And on behalf of the Brotherhood:

P. M. Mandziak	– General Chairman, St. Thomas
J. B. Adair	– Vice-President, Ottawa
F. Carmichael	– Local Chairman, Belleville
W. D. McClurg	– Grievor

AWARD OF THE ARBITRATOR

Article 112.3(a), (b) and (c) of the Collective Agreement are as follows:

112.3 An employee who does not commence a shift or tour of duty between 0001 hours and 2359 hours on a general holiday and who has completed 30 days of continuous employee relationship shall qualify for a holiday with pay providing:

- (a) He is available for duty on the holiday, unless suffering from a bona fide injury or hospitalized on the holiday, or who is in receipt of or who subsequently qualifies for weekly indemnity benefits because of illness on such holiday, and is entitled to wages for at least 15 shifts or tours of duty during the 30 calendar days immediately preceding the general holiday, or
- (b) he is available for duty on the general holiday and he is available for duty or commences a shift or tour of duty on the day before and the day after the general holiday.
- (c) a vacation day on pay shall be considered as a qualifying day under this paragraph.

The grievor was, at all material times, an “employee” of the Company. He did not commence a tour of duty on the holiday in question. He had completed 30 days of continuous employee relationship. He was therefore qualified for a holiday with pay on Good Friday, 1979, provided he came within either Clause (a) or Clause (b) of Article 112.3

In the circumstances of the instant case, there is no question of the grievor’s coming within Clause (b) as he was, by reason of illness, not available for duty on the holiday, nor was he available for duty on the days before or after the holiday. The issue in this case is whether or not the grievor met the requirements of Article 112.3(a) of the Collective Agreement.

The requirements of Article 112.3(a) may be met, as I read the provisions of that Article, in one or the other of two ways. First, an employee may be “available for duty on the holiday”. It is clear that in this case, by reason of his illness, the grievor was not available for duty on the holiday. Second, an employee is excepted from the requirement of availability for duty and so will be entitled to a holiday with pay, if he comes within the somewhat complex class of persons then described in Article 112.3(a). This class of persons consists of (i) those who suffer from a bona fide injury or are hospitalized on the holiday; and (ii) those who are in receipt of or subsequently qualify for weekly indemnity benefits because of illness on the holiday. The grievor, in a general way, came within group (ii) above described, in that he was in receipt of weekly indemnity benefits (by reason of illness) on the holiday.

The exception from the requirement of availability on the holiday, however, involves not merely being injured, hospitalized or in receipt of weekly indemnity benefits, but also requires being “entitled to wages for at least 15 shifts or tours of duty during the 30 calendar days immediately preceding the general holiday”. The grievor did not meet this requirement, did not therefore come within the exception to the general provisions of Article 112.3(a) and thus, not meeting the other requirements of Article 112.3, was not entitled to pay for the holiday.

It is to be noted that the grievor, who had not worked for some considerable time when the holiday occurred, was in fact in receipt of weekly indemnity benefits for the period which included the holiday.

It was argued that Clauses (a) and (b) of Article 112.3 deal with different situations: under each provision the employee must, in general, be available for duty on the holiday. Under Clause (b), the employee must also be available for duty or commence a shift on the day before and the day after the holiday. Under Clause (a), the sick employee is excepted from that requirement. Clause (a), however, is not as general as that: the sick employee is exempted from the strict requirement of attendance or availability on the “qualifying days” where he has in fact worked a certain amount of time (15 shifts or tours of duty) during the period (30 calendar days) immediately preceding the holiday. There is no inconsistency between these provisions, and the Collective Agreement is not, as was argued “unworkable”. The grievor simply does not meet the requirements for holiday pay set out in the Collective Agreement.

For the foregoing reasons, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR