

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 892

Heard at Montreal, Tuesday, December 8, 1981

Concerning

### CANADIAN NATIONAL RAILWAYS

and

### BROTHERHOOD OF LOCOMOTIVE ENGINEERS

#### **DISPUTE:**

Claim of Locomotive Engineer R.R. Pfeifer of Canora, Saskatchewan for General Holiday pay December 25, 1980.

#### **JOINT STATEMENT OF ISSUE:**

Locomotive Engineer R.R. Pfeifer was assigned to the spare board at Canora, Saskatchewan. On December 18, 1980, he booked off as unfit for duty. At 1520 hours December 24, 1980, he booked ready for duty at which time he enquired as to vacancies and when it was expected he would be required for work. Upon being informed that he would likely be called at 2300 hours for Train No. 91, which was ordered for 0100 hours December 25, 1980, Canora to The Pas, he again booked off as unfit for duty. He booked ready for work again at 2315 hours, after another Locomotive Engineer was called for Train No. 91.

Locomotive Engineer Pfeifer submitted a time return claiming General Holiday pay for December 25, 1980. The Company declined payment of the claim on the grounds that claimant failed to qualify in accordance with Paragraph 79.3 (a), Article 79 of Agreement 1.2. The Brotherhood contends that he did qualify.

#### **FOR THE EMPLOYEE:**

**(SGD.) A. J. BALL**  
GENERAL CHAIRMAN

#### **FOR THE COMPANY:**

**(SGD.) G. E. MORGAN**  
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

J. A. Fellows                   – Manager, Labour Relations, Montreal  
P. L. Ross                      – Coordinator Transportation - Special Projects, Montreal  
K. H. Brownridge           – Trainmaster, Canora

And on behalf of the Brotherhood:

A. J. Ball                       – General Chairman, Regina

## **AWARD OF THE ARBITRATOR**

Article 79 of the Collective Agreement provides for general holidays including, of course, Christmas Day. Except for the matter here in issue, it is acknowledged that the grievor was qualified for a holiday with pay on December 25, 1980. Article 79.3 (a), however, requires that the employee (with certain exceptions not here material), be “available for duty on the holiday”. It is the Company’s position that in the circumstances set out in the Joint Statement, the grievor was not “available for duty” on December 25, 1980.

Article 79.5 of the Collective Agreement defines the expression “availability for duty”, for the purposes of Article 79.3. In cases such as that of the grievor (who was on the spare board), Article 79.5 (b) provides that “An unassigned employee shall hold himself available for duty throughout a general holiday”. In the instant case, it is clear to me that the grievor did not do that: when advised (on the afternoon of December 24) that he would likely be called for a train ordered at 0100 on December 25, he booked off as unfit for duty, thus avoiding a call he did not want. It is true that the call would have been made (in accordance with the calling provisions) at 2300 on December 24. The grievor was not, however, required to be available for duty then, but to be available for duty on December 25. It was duty on that date that the grievor avoided, and for which he made himself unavailable.

In these circumstances, the grievor did not in fact hold himself available throughout the holiday, but only for part of it. He did not, therefore, come within the provisions of Article 79, and so was not entitled to a holiday with pay. Accordingly, the grievance must be dismissed.

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