

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 898

Heard at Montreal, Tuesday, January 12th, 1982

Concerning

CANADIAN PACIFIC LIMITED

and

RAIL CANADA TRAFFIC CONTROLLERS

DISPUTE:

Claim by Operator C.A. MacKinnon for General Holiday pay for December 25, 1980.

JOINT STATEMENT OF ISSUE:

Mr. MacKinnon was advised by bulletin to report for duty at 1500 December 25, 1980, to cover a "call" for train No. 11.

The Company has no record of Mr. MacKinnon having reported for duty that day.

The Company contends that Mr. MacKinnon, by not covering his assignment that day, was not available for duty pursuant to Article 14.04.02, and therefore, is not eligible for Holiday Pay.

The Union contends that Mr. MacKinnon made every reasonable effort to meet his obligations and that he should, therefore, be paid for the holiday.

FOR THE EMPLOYEES:

(SGD.) D. H. ARNOLD
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. B. CHABOT
GENERAL MANAGER, OPERATION AND MAINTENANCE.

There appeared on behalf of the Company:

B. A. Demers – Supervisor, Labour Relations, Montreal
I. J. Waddell – Labour Relations Officer, Montreal

And on behalf of the Employee:

D. H. Arnold – General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

The grievor was Second Operator at Saint John. His assigned rest days were Tuesday and Wednesday. In 1980 Christmas fell on a Thursday, which was a regular work day for the grievor. He was, nevertheless, entitled to a holiday with pay on that day, subject to the provisions of the Collective Agreement. Apart from the matter in issue here, the grievor met all the necessary qualifications for holiday pay.

Article 14.04.02 of the Collective Agreement provides that to be qualified for holiday pay, an employee:

... must be available for duty on such holiday if it occurs on one of his work days excluding vacation days except that this does not apply in respect of an employee who is laid off or suffering from a *bona fide* injury, or who is hospitalized on the holiday, or who is in receipt of, or who subsequently qualifies for, weekly sickness benefits because of illness on such holiday; a regularly

assigned employee who is required to work on such general holiday shall be given an advance notice of four calendar days, except for unforeseen exigencies of the service, in which case he will be notified not later than the completion of his shift or tour of duty immediately preceding such holiday that his services will be required.

In the instant case the holiday did occur on one of the grievor's work days. The grievor was in fact required to work on that day, and was given the required notice. While the grievor's regular hours of work were from 1400 to 2200, the bulletin advising of the requirement that his position work on December 25 stated "Call at 1500 for No. 11". This was because the necessity of work on the holiday was created by the requirement of a Second Operator in connection with the ordering of the crew and the copying and delivering of train orders in connection with that train, scheduled to arrive at 1815. The crew would be called at 1515, in order to be on duty at 1715.

The grievor was aware of the requirement that he work on December 25. On December 22, he asked another Operator to cover his duties for him, but the other Operator was unable to do so. Nevertheless before leaving for his days off (the grievor lives in Yarmouth, and returned there), he left a note for the other operator, asking him to cover his shift.

On December 25, the Chief Dispatcher learned of the grievor's unsuccessful request to the other operator, and learned as well that the grievor had gone to Yarmouth. He concluded that alternate arrangements were necessary in order not to delay Train No. 11, and eventually arranged for an off-duty Dispatcher to cover the work (at Dispatcher's penalty overtime rates). The Dispatcher performed the necessary work in connection with Train No. 11, which was on time.

In fact the grievor, realizing that he had been unable to arrange to have his shift covered, made efforts to get to work. It would appear to have been his plan to fly from Yarmouth to Saint John (via Halifax) on a flight scheduled to depart Yarmouth at 1230 on December 25, and to arrive Saint John Airport at 1530. If this plan had worked, the grievor would nevertheless have been late, not simply in terms of reporting time, but late as well in terms of the important work for which he was called.

The flight, however, was cancelled. The grievor telephoned one of the Chief Dispatchers at his home (it would have been preferable to call the other Chief Dispatcher, who was on duty), and the Chief Dispatcher indicated he would try to find someone to cover the position. The grievor then drove to Digby (some hundred kilometers from Yarmouth), and took the 1530 ferry to Saint John, arriving there at 1815. The weather was very bad, and the grievor could not get to the station until 1915, by which time Train No. 11 had left, and the important work of his position for that day had been done.

Although the Company has no record of the grievor's attendance at work on that shift, I am satisfied from the material before me that he did in fact arrive at work, and performed various duties. He was there, however, for less than half of his shift, and not there at all to perform the important duties for which he had been called.

In my view, this was not substantial compliance with the requirements of Article 14.04.02. The grievor was not "available for duty": even had his original plan, to fly to Saint John, been successful, he would still have been late for the performance of the important work. It may be that Train No. 11 is often late, but the grievor was not entitled to rely on that as an excuse for his own lateness.

Accordingly, it must be concluded that the grievor did not meet the qualification for holiday pay set out in the Collective Agreement and the grievance must therefore be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR