

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1049

Heard at Montreal, Tuesday, March 8th, 1983

Concerning

CN MARINE

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claim for 2 1/2 hours' pay for Storekeeper G. Sexton and Engineroom Assistants R. G. Sherren, P. F. Flood, J. I. Fraser, K. R. MacLean and J. P. Gaudet.

JOINT STATEMENT OF ISSUE:

On April 8, 1982, Messrs. Sexton, Sherren, Flood, Fraser, MacLean and Gaudet left the M. V. "John Hamilton Gray" at Borden, P.E.I. prior to the completion of their tour of duty for that day and their pay was adjusted accordingly.

The Union claimed that Article 29.1 of Agreement 5.61 was violated and these employees should have been paid an additional 2 1/2 hours for that week.

The Company declined the Union's claim.

FOR THE BROTHERHOOD:

(SGD.) W. C. VANCE
REGIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) G. J. JAMES
DIRECTOR INDUSTRIAL RELATIONS

There appeared on behalf of the Company:

N. B. Price – Manager Labour Relations, Moncton

And on behalf of the Brotherhood:

W. C. Vance – Regional Vice-President, Moncton

AWARD OF THE ARBITRATOR

The week in question was a week in which a statutory holiday – Good Friday – fell. The grievors were entitled to a holiday with pay on that day, and they had such holiday. They were paid eight hours for that day.

Their regular working schedule required the grievors to work 8 hours per day Monday to Thursday, and 6 hours on Friday. Had they worked their regular hours Monday to Thursday, then the effect of their being credited with eight hours for the Friday would be that their total compensated hours for the week would be 42. This would, in the normal course, have led to a premium payment at the end of the eight week averaging period.

In the material before me, there is a conflict as to whether or not there had been a practice of working a short day on the day preceding a holiday. It is not necessary to resolve that conflict since the issue here is not whether or not the grievors ought to have worked, but whether or not they are entitled to pay for time not worked. They did not in fact work their full scheduled shift on the Thursday.

Article 29.1 sets out the weekly basic rates of pay. Article 29.3 provides that the hourly rate is to be calculated by dividing the weekly rate by 40. There is in fact no issue as to the rate itself. The issue is as to whether or not it is to be paid in respect of hours not worked.

Article 29 is not in itself a guarantee provision. It simply sets out the rates to be paid. The withholding of payment for hours not worked was not, therefore, a violation of Article 29. The grievance, however, appears really to be in respect of the total payment made to the grievors for the week in question. They in fact worked a total of 31.5 hours (8.5 hours in each of Monday, Tuesday and Wednesday, and 6 hours on Thursday), although they ought to have worked 8.5 hours on Thursday as well, for a total of 34 hours. Since they in fact worked 31.5 hours, they ought to have been paid for 31.5 hours. Such payment is quite apart from their holiday pay entitlement. Adding the 8 hours' holiday pay, the grievors were entitled to 39.5 hours payment, on the basis of the hours actually worked (Had they worked as scheduled they would, as indicated above, have been entitled to 42 hours' pay altogether, some of it at premium rates).

On the basis of actual hours worked (31.5) plus holiday pay, the grievors were entitled, then, to 39.5 hours' pay for the week in question. On that basis, they would not be paid for the hours not worked, when they left early. The Company, however, appears only to have paid the grievors for 37.5 hours in that week. While non-payment for hours not worked would be justified, there would appear to have been a deduction from an amount which already took into account the grievor's having left early. In effect, the same deduction would appear to have been taken twice.

It would further appear that while some 2.5 hours were originally deducted, one-half hour was subsequently paid. The claim now is for two hours' payment. In my view the matter of entitlement to payment is best dealt with by considering hours actually worked separately from holiday pay. The grievors actually worked, it appears, 31.5 hours. They are entitled to payment for that. They ought, it seems, to have worked 34 hours. Since they did not do that much work, they are not entitled (apart from any questions of guarantees) to that much payment. They were, it seems clear, entitled to a holiday with pay on the Friday, and it is not in issue that eight hours' pay is called for.

Thus, while the Company would be entitled to "adjust" the grievors' pay so that they were not paid for hours not worked, it would only make that adjustment if payment for such hours were otherwise to be made. On the basis of hours actually worked plus holiday pay, the grievors were entitled to 39.5 hours' pay for the week in question. The payment made to them in respect of that week should be adjusted accordingly.

For the foregoing reasons the grievance is allowed.

(signed) J. F. W. WEATHERILL
ARBITRATOR