

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2201

Heard at Montreal, Tuesday, 12 November 1991

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Claim for the difference between overtime rates and straight time rates from Conductor D.R. Elton and crew for tour of duty worked January 4, 1988.

JOINT STATEMENT OF ISSUE:

On January 4, 1988, a general holiday, Conductor Elton and crew worked on a road switcher assignment, Train No. 561 at Brantford, Ontario. He submitted for his day's work a time return at overtime rates of pay pursuant to the provisions of sub-paragraph (a) of paragraph 77.6 of Article 77 of Agreement 4.16. The Company adjusted his payment to reflect payment at straight time rates of pay pursuant to the provisions of sub-paragraph (b) of paragraph 77.6. The Union alleges the grievor was not properly compensated because payment for his general holiday was applied to the same day that he worked and not his first day off as contemplated in Article 77.6(b). The Company disagrees.

FOR THE UNION:

(SGD.) T. G. HODGES
GENERAL CHAIRPERSON

There appeared on behalf of the Company:

M. S. Hughes	– System Labour Relations Officer, Montreal
D. W. Coughlin	– Manager, Labour Relations, Montreal
D. L. Brodie	– System Labour Relations Officer, Montreal
J. Vaasjo	– Regional Labour Relations Officer, Toronto
S. Valcourt	– Assistant Manager, Administration, CMC, Toronto

And on behalf of the Union:

G. Binsfeld	– Secretary/Treasurer, GCA, Fort Erie
T. G. Hodges	– General Chairman, Fort Erie
M. Gregotski	– Vice-General Chairman, Fort Erie
R. A. Beatty	– Local Chairman, Hornepayne

FOR THE COMPANY:

(SGD.) M. DELGRECO
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

AWARD OF THE ARBITRATOR

The Arbitrator is satisfied that in the circumstances of this case the Company was entitled to treat Conductor Elton and crew under the terms contemplated in article 77.6(b) of the collective agreement. The fact that the Company chose to advance the holiday payment immediately, so that the employees were not required to await the date of the first calendar day on which they were not entitled to wages does not derogate from the fact that the Company was in substantial compliance with the provisions of the article.

While the foregoing analysis is sufficient to dispose of the grievance, if it were necessary to do so, the Arbitrator would also find that the method of payment was consistent with a long standing practice which has been consistently followed pursuant to an understanding between the parties.

For the foregoing reasons the grievance is dismissed.

November 15, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR