

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2929

Heard in Montreal, Tuesday, 10 February 1998

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

CanPar employee Dave Somers (Trader's Blvd. Mississauga, ON) not being paid for December 25 (Christmas Day) and December 26 (Boxing Day), 1996 due to him not showing up for work on December 23 and 24, 1996.

JOINT STATEMENT OF ISSUE:

On December 23 and 24, 1996, Mr. Dave Somers did not show up for work at the CanPar terminal at Trader's Blvd., Mississauga, Ontario. Under a separate grievance C-46-14-97, Mr. Somers was disciplined with thirty (30) demerits for failing to show up on December 23 and 24, 1996. The demerits were reduced on April 30, 1997 to twenty-five (25) and the file closed, subject to appeal.

The remaining issue is one of entitlement to payment for the General Holidays of December 25 (Christmas Day) and December 26 (Boxing Day), 1996. The Union contends that article 14 of the collective agreement, specifically article 14.4(c) has been met and as such, Mr. Somers is entitled to payment for the two General Holidays.

The Union further contends that the Company's claim of Mr. Somers not being available for duty is unfounded. There is no doubt that Christmas and Boxing Day are statutory holidays and that pay would ordinarily be owing for it under article 14. There is further no question that the Company is closed for this period, thus no work is available.

The Union maintains that Mr. Somers is entitled to payment for December 25 (Christmas Day) and December 26 (Boxing Day), 1996 and seeks payment for the two General Holidays.

The Company has denied our request.

FOR THE UNION:

(SGD.) D. NEALE
DIVISION VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) P. D. MACLEOD
VICE-PRESIDENT, OPERATIONS

There appeared on behalf of the Company:

P. D. MacLeod – Vice-President, Operations, Toronto

And on behalf of the Union:

D. Neale – Assistant Vice-President, Trucking Division, Toronto

AWARD OF THE ARBITRATOR

It is not disputed that Mr. Somers did not work on December 23 and 24, 1996, as scheduled. He was separately disciplined for that infraction, a matter which apparently resulted in the assessment of demerits against him. The issue in the instant case relates to his entitlement to payment for the general holidays of December 25 and December 26, 1996.

The Union relies, in part, on article 14.4(c) of the collective agreement in support of its claim that the grievor is entitled to payment for those days. The article reads, in part, as follows:

ARTICLE 14 GENERAL HOLIDAYS

14.1 An employee who qualifies in accordance with 14.4 of this article shall be granted a holiday with pay on each of the following general holidays. When a general holiday falls on an employee's rest day, such holiday shall be moved to the normal working day immediately following the employee's rest day.

ALL PROVINCES:

New Year's Day	Dominion Day
Good Friday	Civic Holiday
Victoria Day	Labour Day
Thanksgiving Day	Christmas Day
Boxing Day	

...

14.4 In order to qualify for pay for any of the holidays specified in 14.1 of this article, a employee:

- a) must have been in the service of the Company and available for duty for at least 30 calendar days. This clause (a) does not apply to an employee who is required to work on the holiday.
- b) 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 hospitalised on the holiday. A regularly assigned employee who is required to work on such general holiday shall be given an advance notice of 4 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 service will be required.
- c) must be entitled to wages for at least 12 shifts or tours of duty during the 30 calendar days immediately preceding the general holiday. This clause (c) does not apply to an employee who is required to work on the holiday.**

(emphasis added)

The Union's representative submits that the grievor earned his entitlement to the two general holidays, by reason of the application of sub-paragraph (c). He stresses that it is not disputed that the grievor did work at least twelve tours of duty during the thirty calendar days immediately preceding Christmas and Boxing Day. On that basis, he submits that he is entitled to the payment in question.

The Company disputes the Union's approach to article 14.4 It stresses that there is a further condition which the grievor does not satisfy. Pointing to sub-paragraph (b), its representative argues that the employee must be available for duty on the holidays if those holidays fall on his or her normally scheduled work days. It is not disputed that Christmas and Boxing Day would have been scheduled work days for the grievor. The Company stresses that at the time in question the grievor made it clear to his supervisor that he would not be available for work for the period generally falling between December 23, 1996 and January 7, 1997. Implicitly, therefore, he indicated to the Company that he was not available to work on either Christmas Day or Boxing Day. On that basis, the Company submits that he has disentitled himself to the payments for the general holidays in question.

The Arbitrator must agree with the Company's interpretation. While it is true, as reflected in sub-paragraph (c) that entitlement to wages for general holidays is generally based on an accrual system of tours of duty worked in the period immediately preceding a given holiday, the instant collective agreement requires something more. As is evident from sub-paragraph (b) of article 14.4, if a general holiday falls on what would otherwise be a scheduled work day for an employee, he or she must be available for duty on that day in order to qualify for pay for the holiday in question. On the facts placed before me there is little dispute that the grievor made it very clear that he would be unavailable for work during the entire holiday period described above. In that circumstance, as he does not satisfy the requirements of sub-paragraph (b) of article 14.4, Mr. Somers must be found to have failed to qualify for pay as provided therein.

The grievance must therefore be dismissed

February 16, 1998

(signed) MICHEL G. PICHER
ARBITRATOR