CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3251

Heard in Calgary, Tuesday, May 14, 2002

concerning

CANPAR

and

UNITED STEELWORKERS OF AMERICA, TC LOCAL 1976

DISPUTE:

Calgary employee B. Plante shortage of pay for December 25 and 26, 2001 and January 3, 2002 (Float Holiday).

JOINT STATEMENT OF ISSUE:

The Union filed a grievance regarding the above mentioned on January 24, 2002. The Company denied the Union's request to settle the grievance on January 28, 2002. The parties have been unable to resolve the grievance to date.

The Union contends that the grievor is entitled to receive 10 hours' pay for each of the above-mentioned general holidays regardless of lay-off status. The Union has grieved that the Company has not followed their own past practice and has violated Article 12.3 of the collective agreement. The Union has also grieved that article 12.1 should now apply.

The Company contends that the grievor was on lay-off at the time of the general holidays and is therefore only entitled to 8 hours of pay for each day. The Company submits that they have not violated article 12.3 and that article 12.1 should not apply in this case.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) A. KANE	**(SGD.) P. D. MacLEOD**
GENERAL CHAIRMAN	**VICE-PRESIDENT, OPERATIONS**

There appeared on behalf of the Company:

P. D. MacLeod	– Vice-President, Operations, Mississauga
K. Greenfield	– District Manager – Alberta
K. Fullbrood	– Supervisor, Edmonton
D. Beatty	– Supervisor, Calgary
S. Derbyshire	– Supervisor, Calgary

And on behalf of the Union:

A. Kane	– Governing Board Representative, Vancouver
B. Plante	– Grievor

AWARD OF THE ARBITRATOR

Upon a review of the material filed the Arbitrator cannot sustain the grievance. The evidence establishes that the grievor was reassigned to an eight hour per day tour of duty prior to the statutory holidays of December 25 and 26, 2001 and January 1 and 3, 2002, the latter date being a float holiday. Contrary to the Union's submission, there is no practice established in evidence which can be said to sustain the view that employees who, as the grievor, worked a ten hour tour of duty in the period of weeks immediately prior to the statutory holidays are therefore entitled to holiday pay based on a ten hour tour when, in fact, their assignment has been reduced to an eight hour shift. In that regard it is significant that the collective agreement provides, within the terms of article 14.6, as follows:

> **14.6** An assigned employee qualified under 14.4 of this Article and who is not required to work on a general holiday shall be paid 8 hours' pay at the straight time rate of his regular assignment.

The evidence does indicate that the Company has departed from the strict requirements of article 14.4, and has provided ten hours' pay for employees who are on a ten hour tour of duty at the time of a statutory holiday. Whether or not that obligation could be enforced under the terms of the collective agreement, it is not one which, even on the basis of practice, can be said to apply to an employee who no longer works on a ten hour tour of duty. That was the grievor's circumstance. In these circumstances the Arbitrator cannot find any violation of the terms of the collective agreement.

For the foregoing reasons the grievance must be dismissed.

May 21, 2002

(signed) MICHEL G. PICHER
ARBITRATOR