CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 247

Heard at Montreal, Thursday, October 15th, 1970

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT & GENERAL WORKERS

DISPUTE:

The Brotherhood claims that the Company violated Article 4.5 of Agreement 5.1.

JOINT STATEMENT OF ISSUE:

Mr. M. Bard, Car Control Clerk, Edmundston, N.B., was required to work on Good Friday, March 27, 1970. He worked four hours and was then released from duty and was compensated for work performed. The Brotherhood contends that Mr. Bard should have been permitted to work an eight-hour shift and should have been compensated accordingly. The Company declined the claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. A. PELLETIER	(SGD.) K. L. CRUMP
EXECUTIVE VICE-PRESIDENT	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared oh behalf of the Company:

D. O. McGrath	– System Labour Relations Officer, Montreal
M. A. Matheson	– Labour Relations Assistant, Montreal
D. Matthews	– Labour Relations Assistant, Moncton

And on behalf of the Brotherhood:

J. A. Pelletier	– Executive Vice President, Montreal
L. K. Abbott	– Regional Vice President, Moncton
W. C. Vance	– Representative, Moncton

AWARD OF THE ARBITRATOR

Article 4.5 of the collective agreement, relied on by the union, is as follows:

> **4.5** regularly assigned employees who report for duty on their regular assignments shall be paid eight (8) hours at their regular rate. Employees who are permitted to leave work at their own request shall be paid at the hourly rate for actual time worked, except as may be otherwise arranged locally.

The grievor, as set out in the Joint Statement of Issue reported for work on Friday, March 27, 1970. The grievor is a regularly assigned employee, and in the normal course would be entitled to 8 hours on any day on which he reported on his regular assignment, as article 4.5 makes clear. That is a provision of general application, and is a part of article 4, which deals generally with hours of work.

Friday, March 27 was a general holiday under the collective agreement, and the grievor was entitled to a holiday with pay, pursuant to article 8.3. It is contemplated that employees may be required to work on general holidays and provisions are made as to the conditions then applying. One of the conditions of qualification for holiday pay is that an employee who is notified prior to the completion of his last shift or tour of duty preceding the holiday that his services are required, must report for duty. It may be that the grievor was not in fact notified that his services were required on the holiday. If that were so, then it seems clear he could have remained away from work that day – taken a holiday – and received his regular pay nevertheless. The grievor, whether notified or not, did in fact report for work. Because of the continuous nature of his work, it seems to have been expected both by the company and the grievor that he would report. At any rate, he did, and the mere fact that he was entitled to receive holiday pay would not of itself displace the general obligation of the company to pay him for eight hours for his attendance that day, pursuant to article 4.5.

The company, however, relies on article 8.8 of the agreement, which is as follows:

> **8.8** An employee qualified under Article 8.2 or 8.3 and who is required to work on a general holiday shall, at the option of the Company
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> > **(b)** be paid for work performed by him on the holiday with a minimum of four hours at the pro rata rate for which the equivalent hours of service may be required but employees called for a specific purpose shall not be required to perform routine work to make up such minimum time and, in addition, shall be given a holiday with pay on the first calendar day on which the employee is not entitled to wages following the holiday; pay for such holiday shall be eight hours at the straight time rate of the position worked on the holiday.

The grievor was an employee qualified under article 8.3, and he was in fact required to work on the holiday. He may have had no proper notification, so that he might have been justified in staying away, but he did not do this. He reported to work, and did work, and in this very ordinary sense of the term, he was required to work on that day. Thus, article 8.8 does apply to his case. It deals particularly with the situation at hand and would displace any general provision of the agreement in case of conflict. Under article 8.8(b) he was entitled to a minimum of four hours' work, at straight time, and was entitled in addition to a holiday with pay on another day. It was stated that the grievor was not in fact given the paid holiday on another day to which he was entitled. If this was the case, then it was wrong, for his entitlement is clear. That is, however, not the issue before me. It may be noted that if the union's contentions were correct, and article 8.8 did not apply, then while article 4.5 would apply so that the grievor would be entitled to a full eight hours' pay for the day, he would not be entitled it seems, to any other payment. Holiday pay on the holiday is provided for employees not required to work, and the additional holiday with pay is provided for only under article 8.8 (b).

On the facts of this case, I find that article 8.8 does indeed apply and that the grievor was entitled to the payments for which it provides. A minimum of four hours' pay is expressly provided for, and was received by the grievor. The general provision of eight hours' pay for employees reporting on their regular assignments does not apply in this case, which comes precisely within other more specific provisions of the collective agreement.

For these reasons, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR