CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 627

Heard at Montreal, Tuesday, September 13th, 1977

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Vacation entitlement of Mr. J. Arioni, St. Catherines, Ontario.

JOINT STATEMENT OF ISSUE:

On July 23, 1975, Mr. Arioni was granted a leave of absence because of illness. He remained on that absence until he took retirement on March 31, 1976. Mr. Arioni performed no work in 1976, but he did receive vacation pay based on time worked in 1975.

The Brotherhood contends that, under Article 9.12 of Agreement 5.1, Mr. Arioni should be credited with the time off duty because of illness in 1976, and should receive vacation pay based on that credit.

The Company contends that, in this case because there was no work performed at all in 1976, there would be no service upon which to base vacation entitlement.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(Sgd.) J. A. PELLETIER	**(Sgd.) S. T. COOKE**
NATIONAL VICE-PRESIDENT	**ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS**

There appeared on behalf of the Company:

A. D. Andrew	– System Labour Relations Officer, Montreal
C. L. LaRoche	– System Labour Relations Officer, Montreal
V. E. Gannon	– System Labour Relations, Officer, Montreal
W. W. Wilson	– Labour Relations Assistant, Toronto
T. E. Allison	– Labour Relations Officer – Express Division, Montreal

And on behalf of the Brotherhood:

J. D. Hunter	– Regional Vice President, Toronto

AWARD OF THE ARBITRATOR

Article 9.12 of the collective agreement is as follows:

> Time off duty account *bona fide* illness, injury, to attend committee meetings, called to court as a witness, or for uncompensated jury duty, not exceeding a total of 100 days in any calendar year, shall be included in the computation of service for vacation purposes.

The grievor was off duty on account of *bona fide* illness throughout all of 1976, until the time of his retirement. He did not work for the Company during that year. His name remained (quite properly) on the seniority list, until his retirement.

The Union's contention is that, while on leave of absence, the grievor would be entitled to a credit of up to 100 days towards vacation credits in respect of the year 1976. The Company's position is that there must be some "service" in that year, in which such time of leave of absence may be "included". In my view, where the collective agreement provides that certain times off duty are to be "included" in the computation of service for vacation service, there is no implication that there must be some period in which work is actually performed during the year in question. The time off duty is included in the computation without regard to other periods, such as time on duty, which would also be included in the computation.

In the instant case, the grievor was off duty during 1976 on account of *bona fide* illness, his employment was not terminated prior to his retirement, and that time (up to the limit set out in Article 9.12) is to be included in the computation of his service for vacation purposes. That is, in my view, the clear effect of Article 9.12 in this case.

For the foregoing reasons, the grievance is allowed.

(sgd.) J. F. W. WEATHERILL
ARBITRATOR