CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 665

Heard at Montreal, Tuesday, June 13th, 1978

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claim of Mr. E. Gibson and all other regular and spare employees covered by Agreement 5.8 on the Great Lakes region relative to implementation of the Arbitrator's award in CROA Case No. 587.

JOINT STATEMENT OF ISSUE:

With respect to the eight week averaging period which closed on August 8, 1974, Mr. E. Gibson submitted a "Short Pay" claim under Article 4.2(b) of Agreement 5.8. The time claim was declined. On November 1, 1974, the Local Chairman progressed the grievance on behalf of Mr. E. Gibson and included as part of the grievance all other regular and spare board employees represented by Local Lodge 283, claiming violation of Articles 4.2(b) and 4.2(f) of Agreement 5.8. The grievance was progressed through all steps of the grievance procedure. Over a period of time a number of grievances claiming violation of the same collective agreement provisions were progressed through the grievance procedure.

On January 11, 1977, the Company and the Brotherhood submitted a case to the CROA respecting a time claim in favour of C.L. Ritcey involving the application of Article 4.2 with the understanding that the Arbitrator's decision would apply in all cases.

In applying the Arbitrator's award to the claims of E. Gibson, et al, the Company considered that paying Mr. E. Gibson and the regular and spare board employees in accordance with the award for the 8 week averaging period closing August 8, 1974 satisfied the grievance as submitted.

The Brotherhood claims that satisfaction of the claim consists of applying Article 4.2 as awarded by the Arbitrator to Mr. E. Gibson and the other employees referred to, in all instances when a general holiday occurred between January 1, 1974 and the date of the award.

The Company has declined the Brotherhood's claim.

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:

G. A. Carra	– System Labour Relations Officer, Montreal
C. A. McHardy	– Labour Relations Assistant, Montreal
W. W. Fitz-Gerald	– On Board Services Officer, VIA Rail Canada Inc.
N. Lenoir	– Labour Relations Officer, VIA Rail Canada Inc.
A. F. McQuaid	– Supervisor Employee Services, VIA Rail Canada Inc.

And on behalf of the Brotherhood:

J. A. Pelletier – National Vice-President, Ottawa
J. Huggins – Local Chairman, Toronto

AWARD OF THE ARBITRATOR

Case No. 587 was the individual grievance of Mr. C.L. Ritcey for additional overtime payment in respect of the pay period which included September 2, 1974. The grievance was allowed, and it would appear that Mr. Ritcey's claim was paid.

The grievance in this case was filed on November 1, 1974. It is said to be on behalf of Mr. E. Gibson and all other regular and spare board employees. The relief sought in the grievance was that the Company "immediately go back to the period from January 1, 1974 and assure the Local that all hours worked on a statutory holiday were compiled in total hours for the 8-week period for the purpose of determining hours worked in excess of 320 hours." This involved, essentially, the same sort of question as to the application and interpretation of the collective agreement as was made in the Ritcey case. The claim made in the grievance was, however, for relief in respect of a time well beyond the limit set out in article 24.20 of the collective agreement, and it may have been filed after the applicable time limit had expired. The Company, however, raised no objection to the timeliness of the grievance, perhaps because the whole matter had been the subject of discussions. The grievance makes no claim with respect to future payments.

There is, perhaps, in any claim for payment under a collective agreement, an implicit request that future payments be in accordance with the agreement. That is not to say, however, that a present grievance is *ipso facto* a future grievance, and an arbitrator certainly has no jurisdiction to grant future or anticipatory relief except to the extent that a declaratory award may be thought indirectly to have that effect.

In the course of the grievance procedure in the Ritcey case, it was agreed (as is set out in the Joint Statement in this case) that it would proceed to arbitration "with the understanding that the Arbitrator's decision would apply in all cases". This was not some sort of acceptance of a general claim for the future, it was a reference to certain particular grievances which had been filed and were in the course of the grievance procedure at the time the Ritcey case went to arbitration. If the Ritcey claim succeeded – and that was a particular claim in respect of a particular pay period – then the other claims could also succeed. There was no suggestion that future grievances, relating to pay periods subsequent to those for which claims had been made, had been filed and were likewise held in abeyance to be resolved in accordance with the award.

There is no doubt, and it is acknowledged, that the decision in the Ritcey case is to be applied in the instant case, which was covered by the agreement of the parties at the time the Ritcey case went to arbitration. The award in the Ritcey case was that the grievance was allowed, and the effect of that would be that Mr. Ritcey would be entitled to an additional payment for the pay period there in question. Therefore, pursuant to the agreement made in this and the other cases, this grievance is to be allowed and the grievor or grievors paid an additional payment for the pay period in question. The issue to be determined, then, is what is the pay period in question.

The Union contends that Mr. Gibson and others are entitled to increased overtime pay where work was performed on a general holiday (and where other requirements of payment are met), throughout the period from January 1, 1974 until the time the award was issued, that is, until January 1977.

It will be clear from the foregoing that this claim covers a much larger period of time than that to which the grievance filed on November 1, 1974, could reasonably be taken to have referred. There is nothing in the agreement between the parties that this and other cases would be governed in their result by the award in the Ritcey case which would have the effect of enlarging the claims in those cases. Ritcey's claim was not enlarged. As I have indicated above, the filing of a grievance, whether of an individual or a policy nature, does not avoid the necessity of filing grievances in the future as claims arise. The Company committed itself to apply the Ritcey award to the grievance filed on November 1, 1974 (and to certain other grievances), but is not thereby bound to make payment in respect of periods not covered by those grievances. The award in **Case No. 587**, then, does not require the Company to make any payment under the grievance now before me in respect of any period after the date the grievance was filed. There was no agreement between the parties to that effect.

As to the claim for relief from January 1, 1974, it may be observed that this claim relates in part to a period before the provision relied on became a part of the collective agreement. The matter was dealt with in the arbitration award of Mr. Justice Emmett Hall dated January 16, 1974, and was incorporated into a collective agreement dated May 24, 1974. There is nothing in the material before me as to the extent to which that provision may have had some retroactive effect. This grievance, as has been noted, is dated November 1, 1974.

Article 24.20 of the collective agreement provides as follows:

> **24.20** The settlement of a dispute shall not under any circumstances involve retroactive pay beyond a period of 60 calendar days prior to the date that such grievance was submitted at Step 1 of the Grievance Procedure.

According to the Company's submission, Mr. Gibson's claim was identified as relating to the averaging period running between June 14 and August 8, 1974. After the decision in **Case No. 587** was issued the Company offered to make the appropriate increase in Mr. Gibson's pay for that period, and this offer was subsequently extended to other employees covered by the grievance. The material before me does not indicate whether or not similar claims arose with respect to the pay periods between that time, and the time the grievance was filed. If such claims can be made out on their facts, then they should be paid. They would have been within the proper scope of the grievance. Claims for the period preceding September 1, 1974, however, could not be allowed because of the prohibition clearly set out in article 24.20 of the collective agreement. In the circumstances of this case, no objection to timeliness having been raised and the Company having considered the grievors as entitled to payment in respect of the June 14 – August 8 pay period, it is my view that that payment should also be considered as one contemplated by the agreement made at the time **Case No. 587** went to arbitration.

For the foregoing reasons, it is my award that Mr. Gibson and other employees covered by the grievance be paid any appropriate pay increase for the period June 14 – August 8, 1974, and also in respect of the period from September 1 – November 1, 1974.

(signed) J. F. W. WEATHERILL
ARBITRATOR