CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1955

Heard at Montreal, Tuesday, 10 October 1989

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Time claim on behalf of D.W. Patton, London, Ontario for 47 miles at road switcher rates, submitted pursuant to Article 76.6, General Holidays, of Agreement 1.1.

JOINT STATEMENT OF ISSUE:

On November 11, 1988, Locomotive Engineer D.W. Patton was assigned to road switcher 583. He submitted a time ticket on which he claimed 185 miles at straight-time miles and 47 miles at time and one-half. In accordance with Article 76.6, he also submitted a time ticket for holiday pay wherein he claimed 232 straight-time miles.

The Company reduced the grievor's claim for holiday pay by 47 miles pursuant to Article 76.6, which excludes overtime payments from the amount paid for holiday pay.

The Brotherhood contends that while Article 76.6 excludes overtime payments, it does not exclude the miles, paid at overtime rates, from an employee's holiday pay. The Brotherhood submits that the 47 overtime miles paid to the grievor on his regular time claim were properly included, at straight-time rates of pay, on his time claim for general holiday pay. It therefore requests the grievor be paid the 47 miles at straight-time rates.

The Company disagrees.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD) J. D. PICKLE	(SGD) J. B. BART
GENERAL CHAIRMAN	FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. B. Bart	– Manager, Labour Relations, Montreal
S. F. McConnville	– Labour Relations Officer, Montreal
M. Hughes	– Labour Relations Officer, Montreal
M. Fisher	– Co-Ordinator, Transportation, Montreal

And on behalf of the Brotherhood:

J. D. Pickle	– General Chairman, Sarnia
C. Hamilton	– Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

In the Arbitrator's view the principles which govern the resolution of this dispute were canvassed by this Office in **CROA 226**. It was there found that a collective agreement provision which, for all practical purposes, is materially indistinguishable from the provision at issue in the instant case, recognized that mileage travelled in

excess of the basic one hundred miles equating to eight hours constituted overtime, and that the rate at which overtime is paid does not affect its nature as overtime. As in the earlier decision of **CROA 38**, it was concluded that overtime earnings are expressly excluded from the amount an employee may claim as holiday pay under the Collective Agreement.

I can see nothing in the instant Collective Agreement or the material before me to differ from that conclusion in this case. That result is, moreover, consistent with the overall purpose of holiday pay, which is to ensure that employees who work are not disadvantaged as compared to those who do not work and who do receive a regular day's wages, exclusive of overtime. Any intention to depart from that generally accepted principle underlying the payment of holiday pay would, in the Arbitrator's view, require clear and unequivocal language which is not found in the Collective Agreement at hand.

For the foregoing reasons the grievance is dismissed.

October 12, 1989 **(Sgd.) MICHEL G. PICHER**
ARBITRATOR