IN THE MATTER OF AN ARBITRATION

BETWEEN:

NORTH CARIBOO FOREST LABOUR
RELATIONS ASSOCIATION

(hereinafter called the "Employer")

AND:

INTERNATIONAL WOODWORKERS OF AMERICA,
LOCALS 1-424 and 1-425

(hereinafter called the "Union")

(Statutory Holiday Pay Arbitration)

Arbitrator:	H. Allan Hope, Esq.
Counsel for the Employer:	W. R. Hibbard, Esq.
Counsel for the Union:	R. B. Blasina, Esq.
Date of Hearing:	March 16, 1982
Place of Hearing:	Prince George, B. C.

A W A R D

I

The parties in this arbitration seek the interpretation of a provision of the Collective Agreement dealing with the entitlement of employees to statutory holiday pay. The arbitration is raised pursuant to a provision of the Collective Agreement, a master agreement negotiated on behalf of a number of employers, providing specifically for

the resolution by arbitration of disputed interpretations of the agreement. Pursuant to that provision the parties agreed that the arbitrator was properly constitued and had jurisdiction to determine the issue in dispute.

The specific provision requiring interpretation is Article XI, Sec. 2(a), as follows:

> "All hourly-rated and piece-work employees who qualify for the paid holiday under the conditions set out below shall be paid for the holiday at their regular job rate of pay for their regular work schedule." (underlining added)

Neither party seeks to rely on extrinsic evidence in the sense of practice but both parties rely on what amounts to evidence of bargaining history in the form of a Memorandum of Agreement executed by the parties wherein they agreed to the terms and conditions of the subject Collective Agreement. That Memorandum provided as follows with respect to the disputed provision:

> "20. The parties agree that in regard to statutory holiday pay for those holidays designated in Article XI - Statutory Holidays the Association will instruct its members, in bulletin form, to pay shift differential where applicable in addition to the payment of statutory holiday pay on the basis of what the employee would have normally earned had he worked that day as per present practice." (underlining added)

I repeat, no extrinsic evidence beyond the Memorandum of Agreement was adduced. The parties stated what

amounts to an hypothetical case to illustrate the disputed interpretation. It was noted that employees in a designated job category can receive premium pay by reason of their performance, or their qualification to perform, duties in addition to their regular job. The example given was that of an employee in the category of "Job Cleanup - Cat 930" who received in that category hourly pay at the rate of $12.48. In addition he was qualified as a First Aid Man with an "A" ticket and was a "Designated First Aid Attendant" and thereby received a premium rate described in the Collective Agreement as "Job Rate Plus .50." The same employee was designated as a "Chargehand" and received a further premium described in the Agreement as "Job rate plus 25¢ per hour". That employee, when working, regularly received as his hourly rate the designated rate for his job plus the two premium rates. The Union takes the position that the words "regular job rate of pay for their regular work schedule" means the hourly rate plus the two premium rates. The Employer says that those words mean the hourly rate for the job and do not include the two premium rates.

II

The Union submits that if the interpretation of the Employer is to be accepted the words "for their regular

work schedule" are redundant. The argument is that if the provisions is limited to the ordinary rate of pay applicable to the regular job of an employee it would be sufficient to say "their...job rate of pay" without adding "regular" as a prefix to "job rate of pay" or "for their regular work schedule". The Union is correct in that submission. Relying on the ordinary meaning of the language used the interpretation urged by the Employer gains nothing from the addition of the aforementioned words. On the interpretation of the Employer those words become redundant. That does not necessarily advance the interpretation urged by the Union. It cannot be said that the term "regular" or "for their regular work schedule" compels the interpretation that the applicable rate will include premiums, the interpretation urged by the Union. I will deal with the meaning I assigned to those words later in this Award.

The Union next observes that the disputed provision applies to both hourly-rated and piece-work employees and points to a part of the same provision wherein statutory pay for piece-work is calculated on the basis of average daily earnings for the 30 working days immediately prior to the holiday. The Union says the intention emerging clearly from that approach to the calculation of pay is that the employee is to be

compensated on a statutory holiday on the basis of the wages he actually earns on the job.

The Union then goes back to the Memorandum of Agreement and emphasizes the portion of Sec. 20 as follows:

> "...to pay shift differential where applicable in addition to the payment of statutory holiday pay on the basis of what the employee would have normally earned had he worked that day as per present practice."

Those words constitute the operative part of Sec. 20. The words preceding it are introductory.

III

The Employer submits that Sec. 20 of the Memorandum Agreement is restrictive and contemplates that statutory holiday pay will include the premium of shift differential but, by the very introduction of that term, statutory holiday pay as it relates to premiums is limited to shift differential. The Employer points to provisions dealing with the benefits of Bereavement Leave and Jury Duty Leave that contain the following restrictive language:

> "...shall be compensated at his/her regular straight-time hourly rate of pay for hours lost from his/her regular work schedule..."

The Employer says that language indicates the intention of the parties to restrict benefits paid when an employeee is away from work to straight time rates.

The Employer says that if the parties had intended statutory holiday pay to encompass premiums, whether consisting of premiums regularly paid or not, they would have provided for that result in clear language by inserting such language as "regular job rate of pay and premium rates regularly paid." The Employer urges that the language is free from ambiguity and that the term "job rate" must be seen as excluding premium rates because, in the very section where premium rates are established, the language used is "job rate plus (premium)." The Employer made the same point with respect to the language used providing for premiums to "Designated First Aid Attendants" where the term "job rate of pay Plus the Ticket premium rate" is used. The Employer says that the use of the two terms, "job rate of pay" and "premium rate" in the same provision clearly differentiates between the two terms and makes it clear that "job rate" does not include "premium rate." The Employer said that the use of "regular job rate of pay" in the disputed provision rather than "job rate of pay" constituted no distinction.

The Union referred me to arbitral authorities dealing with the nature of statutory holiday pay as a benefit and the manner in which disputes as to what is included in statutory holiday pay are approached. In re: Woodlands Enterprises and Woodworkers Local 1-184 (1975) 9 LAC (2d) 367 (Norman) the arbitrator said as follows at page 370:

> "At the root of the issue before us lies the question of the rationale lying behind statutory holiday pay provisions in collective agreements. The following statement has been referred to with approval by many arbitrators over the years: 'It is the consensus of arbitrators that the basic reason for Statutory Holiday Pay is that an employee's regular pay shall not be reduced by reason of his enforced idleness on a statutory holiday...'"

The arbitrator then went on to note that a differing line of arbitral authority had developed and that it was earning favour with arbitrators. He made reference to an extract from T.C.F. of Canada Ltd. and Textile Workers Union of America Local 1332 (1972) 1 LAC (2d) 382 (Adell), cited at page 370 in the Woodlands Enterprises Case as follows:

> "Existing arbitral jurisprudence is predominantly of the view that unless the collective agreement indicates otherwise, holiday pay is not basically a means of indemnifying employees against losing a day's wages through not being allowed to work on the holiday, rather, it is an additional form of payment for work already done, and it must therefore be viewed not from the vantage point of the holiday itself but from that of the period of work for which it provides extra remuneration."

In the Woodlands Enterprises Case the arbitrator was dealing with an issue as to whether employees who were regularly scheduled to work 12-hour days, for which they received four hours overtime per shift, were entitled to have statutory holiday pay calculated at the premium rates. The Employer in that case interpreted a provision requiring the payment of statutory holiday pay to employees at "their regular daily rate" as excluding the additional four hours and the premium that applied to the four hours and thereby paid to those employees statutory holiday pay for eight hours at the straight time rate. The arbitrator acknowledged that the practice of having the employees work the overtime shift was well established and he commented as follows on page 372:

> "On the footing of this regular practice and in the light of the rationale for statutory holiday pay provisions which have been advanced by arbitrators, we are satisfied, on that balance, that the phrase "regular daily rate" in Art. 14.04 (d) refers to work actually and regularly being done by employees, either for which the statutory holiday is an additional form of payment or establishes the employee's regular pay which is not to be reduced by reason of his idleness on a statutory holiday."

The Union advances, in substance, the same reasoning, saying that whether it is viewed as compensation for enforced idleness or as an accumulated benefit for work done the rate to be paid should reflect the wages the employee ordinarily receives in the performance of his job. I agree with that approach to the interpretation of statutory holiday provi-

sions generally and accept that clear language is required to provide for the payment of a statutory holiday rate less than the normal rate of pay received by the employee in the performance of his regular duties. Statutory holiday pay is a contractual benefit that must be achieved by negotiation but when it is achieved in negotiations the interpretation of language conferring the benefit responds to an examination of the industrial relations purpose implicit in the benefit.

I see no divergence in the two views expressed in the Woodlands Enterprises Case. I see statutory holiday pay as paid time off work given in recognition of past service. I do not see a consideration of the nature of the benefit as being advanced by the concept of enforced idleness. I do accept the reasoning that gives rise to the concept, however, in the sense that the nature of the benefit contemplates that the employee will not have to sacrifice pay in acceptance of that benefit in the absence of clear language to that effect. It seems to me that the rationale of what is expressed as divergent views merges in the single concept that employees are seen to earn the right to statutory holiday pay by virtue of past service and to be compensated at the rate of pay they normally receive when at work. Any other approach would, in effect, require the employee to subsidize the benefit, a result that is quite within the collective bargaining reach

of the parties, but not one to be read into language that provides statutory holidays with pay as a general benefit. That benefit is now generally recognized in collective bargaining relationships and limitations on the pay to be received for that day of absence should be set out in express language.

The argument advanced by the Union has much to commend it. The parties accept the Memorandum of Settlement as a resource document to assist in the interpretation of the Collective Agreement. The operative portion of Sec. 20 of the Memorandum reads as follows:

> "...to pay shift differential where applicable in addition to the payment of statutory holiday pay on the basis of what the employee would have normally earned had he worked that day as per present practice."

That language seems clear enough in its contemplation of two aspects of statutory holiday pay:

(a) to pay shift differential where applicable.

(b) pay on the basis of what the employee would have normally earned had he worked that day.

I have some difficulty accepting the interpretation urged by the Employer that the intention emerging from the ordinary language used is that statutory holiday pay in addition to the regular rate of pay will be limited to shift differential.

It is a position strenuously argued and therefore moves me to give close consideration to the language, even though it seems clear on its face. Its meaning becomes compelling if one removes from the phrase the words "the payment of statutory holiday". The phrase then reads "to pay shift differential where applicable" and "pay on the basis of what the employee would have normally earned had he worked that day." Expressed in converse terms the phrase would read "in addition to the payment of statutory holiday pay on the basis of what the employee would have normally earned had he worked that day as per present practice" the Employer agrees "to pay shift differential where applicable." No matter how the language is approached there is an absence of ambiguity. The Employer agrees to pay shift differential where applicable and, in addition, to pay statutory holiday pay on the basis of what the employee would have normally earned had he worked that day.

In addition, I think the point of the Union is well taken when it draws the distinction between the two terms "job rate" and "job rate of pay" as they appear in the qualifying provisions of the "First Aid Attendant" and the "Chargehand" rates as compared with the words "regular job rate of pay" as it appears in the disputed provision. The term "regular job rate of pay" is something different than "job rate" or "job rate of pay". In addition the provisions with respect to Bereavement Pay and Jury Pay do not advance the interpretation argued. They reinforce the

view that when the Employer wanted to limit the concept of pay to exclude premiums it did so in express language, in that case, with the use of the term "regular straight-time hourly rate of pay." Obviously that term means something less than "regular job rate of pay."

I do not say that the Employer is bound to include in the calculations of statutory holiday pay the payment of premiums that are within its continuing discretion. In order to claim premiums in statutory holiday pay it is necessary for the employee to show that those premiums are part of his regular pay in response to his regular schedule. Where the Employer exercises a discretion with respect to the scheduling of employees to positions that include premium pay the employee would not be entitled to have the premium included in statutory holiday pay. The premium must, as the provision contemplates, form part of a regular job rate of pay for the employee while he is working at his regular work schedule. It excludes premiums such as overtime or temporary work in a higher paid category that are paid outside of regular scheduling for that employee. The rationale of the provision is that the employee is entitled to be paid statutory holiday pay at the rate of pay he would have received if he had been at work. Premiums that are paid as other than incidental to the regular work schedule do not fall within the provision. In short, an employee who seeks to have premiums included in statutory holiday pay must meet two criteria, he must be

receiving a premium above his job rate of pay and he must be receiving that premium incidental to his regular work schedule.

In fact, that is the response to the argument advanced by the Union that the term "for their regular work schedule" in the qualifying provision is redundant. I interpret those words as meaning that pay earned other than coincidental with regular work scheduling is excluded from calculation in the fixing of statutory holiday pay. The phrase does not support the interpretation of the Employer but it does import a restriction into the application of the provision to exclude all rates other than those coincidental with routine scheduling. In the result, I conclude that employees who receive premium rates as part of their regular pay while working their regular schedule are entitled to have those premiums included in the calculation of their statutory holiday pay entitlement.

DATED at the City of Prince George in the Province of British Columbia this 26th day of April 1982.

H. Allan Hope, Arbitrator