CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 139

Heard at Montreal, Tuesday, January 14th, 1969

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood contends that Mr. T N. Stol, Warehouseman, Toronto, was unjustly dealt with when he was suspended from work for five days in June 1968 and requests that the discipline be removed and that Mr. Stol be compensated for all time lost.

JOINT STATEMENT OF ISSUE:

On June 5, 1968 Warehouseman T. N. Stol, who was the Local Chairman of Local 26 of the Brotherhood, placed on the notice board a letter addressed to all members of the Local. He was requested by his supervisor to remove the notice in question but refused to do so. He was therefore suspended from service for five days.

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

There appeared on behalf of the Company:

D. O. McGrath	Labour Relations Assistant, C.N.R. Montreal
D. C. Fraleigh	Labour Relations Officer, C.N.R., Toronto
C. Renwicke	Terminal Traffic Manager, C.N.R., Toronto
W. S. Hodges	Labour Relations Assistant, C.N.R. Montreal

And on behalf of the Brotherhood:

F. C. Johnston	Regional Vice-President,C.B.ofR.T..G.W., Toronto
J. Moulaison	Recording Secy. C.B.ofR.T.&G.W., Toronto
T. N. Stol	(Grievor) Toronto
J. A. Pelletier	Executive Vice President, C.B.ofR.T.&G.W., Ottawa

AWARD OF THE ARBITRATOR

The notice referred to in the joint statement of issue was the

following:

"June 4, 1968

TO ALL MEMBERS OF LOCAL 26.

It has been brought to my attention that the Company has reissued Zone Coding booklets to the Warehousemen Grade 2 and are advising the Warehousemen Grade 2 to use them. I however advise you not to use them but get the information from your Warehousemen Grade 3 or Supervisor. I am a Warehouseman Grade 2 myself and I refused to accept this booklet and no action was taken by the Company for the simple reason they (the Company) can not force you. Your co-operation in this matter would be appreciated.

Yours fraternally,

(Sgd.) T. N. Stol, Local Chairman, Local 26"

This notice which was apparently posted by the grievor on June 5, 1968, was considered by the company to be inflammatory, and the grievor was asked to remove it. He refused to do so. The notice was thereupon removed by the company. The next day the grievor posted the following notice:

"June 6, 1968

Article 28 section 14 of the 5 1 Agreement reads as follows:

'At points or in departments where five (5) or more employees are employed, it will be permissible for notices of interest to said employees to be posted. The notice board shall be supplied by the employees and shall be in keeping with the general furnishings.'

The Company approached me June 5, 1968 at 3:13 pm and ordered me to take down a notice from this notice board which read as follows:

'It has been brought to my attention that the Company has reissued Zone Coding booklets to the Warehouseman Grade 2 and are advising the Warehousemen Grade 2 to use them. I however advise you not to use then but get the information from your Warehousemen Grade 3 or Supervisor. I am a Warehouseman Grade 2 myself and I refused to accept this booklet and no action was taken by the Company for the simple reason they (the Company) can not force you. Your co-operation in this matter would be appreciated.'

I refused to take down the notice. Management then proceeded to take down this notice themselves. For your information this matter will be taken up with Labour Relations in Montreal. You will be further notified as to the outcome.

Yours fraternally

(Sgd) T N. Stol,
Local Chairman, Local 26

The company subsequently made the following charges against the grievor:

> "(1) Improper use of employees' notice board.
>
> (2) Inciting employees to act in a manner contrary to the spirit of the Collective Agreement and contrary to the letter of understanding and appendix thereto covering shed classifications dated April 19, 1967 covering various items agreed to during the negotiations of the L.C.L. Freight and Express operations at Toronto."

Following investigation of these charges, the grievor was suspended as the joint statement of issue indicates.

> Article 28.14 of the collective agreement is as follows:
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> "At points or in departments where five (5) or more employees are employed, it will be permissible for notices of interest to said employees to be posted. The notice board shall be supplied by the employees and shall be in keeping with the general furnishings."

The fundamental issue in this case is as to the effect of Article 28.14, and in particular as to the control, if any, which the company may assert over notices posted on the notice board. The notice board in question known as the union notice board, is itself the property of the union, and under the union's control although it is on the premises of the company. It is the company's contention that any notices other than those concerning union meetings or social events must be approved by the appropriate oompany official before being posted. In support of this position the company relies on a directive to this effect issued to vice-presidents and heads of departments on October 22, 1959, and on instructions governing the use of bulletin boards sent to a number of gencral managers on October 31, 1925.

The directives on which the company relies are internal management directives: they set out the position taken by the company in matters such as this but they do not embody or purport to embody the agreement of the parties that this position represents any mutual understanding of the matter. The provisions of Article 28.14 are of course binding upon me, and the directives relied on by the company cannot alter the meaning of that article.

In my view, the policy expressed in the company's directives is not in accordance with the provisions of Article 28.14. It is clear from that article that notices of interest to the employees may be posted on a notice board supplied by the employees themselves. There is no requirement that such notices be approved by the company before being

posted, and nothing to support the suggestion that the company is to be the judge of what might be "of interest" to the employees.

It would seem that the employees themselves acting through their union officers, would be entitled to reasonable control over the materials posted. Any control which may be asserted by the company, however, must be in the exercise of its regular disciplinary power. The union's right to post notices, like any individual's right of free speech, is not entirely without qualifications. The notices must be "of interest" to employees as such, that is, must relate in general to their employnent or their union activities. They may not be scurrilous or obscene. They may not subject the company or any employee to ridicule or contempt, and they may not incite employees to violation of the collective agreement. The company may quite properly direct the removal of such a notice (and I do not purport to set out an exhaustive list of notices which would be improper), and if it is not removed, this may be done by the company.

The notices in question here obviously related to the employment of a group of employees, and would be "of interest" to them. In my opinion they are not "inflammatory" and do not incite employees to any violation of the collective agreement. No doubt the notices were a souroe of irritation and annoyance to the company, but this is not to say that their effect upon the company's operation would be so adverse as to justify their suppression. The notice dated June 4 merely advises employees not to make use of certain coding booklets. It was not established that the employees were required to use these coding booklets, and it cannot be said that the grievor was advising employees to behave improperly. The notice is calmly worded, and there is nothing to suggest that any employees were "inflamed" by it. The notice dated June 6 is simply a statement as to what happened on June 5, and sets out the previous notice. It is no more or less offensive, if it is offensive at all, than the notice dated June 4. In my opinion these notices were of the sort which the union is entitled to post on its notice board pursuant to Article 28.14 of the collective agreement, and they were not of such a nature as to justify the company in removing them or in directing their removal.

For the reasons I have given, it follows that the grievor did not make improper use of the notice board, and that he did not incite employees is charged. It was argued, however, that he ought nevertheless to have obeyed the instruction to take down the notice complained of, filing a grievance if he so desired. This argument is based on the principle set out in many arbitration cases that an employee must follow instructions (unless to do so would subject him to an unreasonable risk of harm, or the like) and seek redress through the grievance procedure. The principle was recently expressed in Case No. 120, where it was held that the grievor ought to have proceeded to take out his train on time, even though the company was in breach of its agreement to provide certain supplies. The rationale of such rulings is that it is essential that the operation - fundamental to the livelihood of employers and employees - may continue uninterrupted, while the redress to which one or the other may be entitled can be considered and decided in an appropriate fashion. There is, in general, an obligation to accept an order, even if it is improper, in order that work may go on. That reasoning, however does not apply in the instant case. The company's

order to remove the notice was not in aid of its operations, and there was no necessity for immediate compliance. There is no evidence that operations were in fact affected by the notice, in which case a demand for its removal might have to be obeyed. In the circumstances of this case, however, I am unable to conclude that the grievor's refusal to remove the notice was improper. It should be clear that in reaching this conclusion I say nothing as to the advice which he offered employees in the notice.

For the foregoing reasons the grievance is allowed. The grievor is entitled to the relief asked.

J. F. W. WEATHERILL
ARBITRATOR