CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 184

Heard at Montreal, Wednesday, November 12th, 1969

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood claims that the Company violated Article 13.3 (a) of Agreement 5.1.

JOINT STATEMENT OF ISSUE:

Messrs. Harris & Nedelcoff were displaced from their regularly assigned positions and, in accordance with Article 13.3 (a), elected to displace Messrs. Kurzlo & Patterson who were then employed as Warehousemen Grade 3 in Concord Express Terminal, Toronto.

Messrs. Harris & Nedelcoff were allowed to displace on positions in the classifications of Warehouseman Grade 3 in the Concord Terminal, having the assigned hours of duty and rest days of their choice but were not allowed to displace on the specific positions occupied by Messrs. Kurzlo and Patterson.

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

There appeared on behalf of the Company:

D. O. McGrath	System Labour Relations Officer, C.N.R. Montreal
P. A. McDiarmid	System Labour Relations Officer, C.N.R. Montreal
G. B. McKeown	General Supervisor Operations, C.N.R. Toronto

And on behalf of the Brotherhood:

J. A. Pelletier	Executive Vice President, C.B.ofR.T.&G.W.

	Montreal
F. C. Johnston	Regional Vice President, C.B.ofR.T.&G.W.
	Toronto
T. N. Stol	Local Chairman, Local 26, C.B.ofR.T.&G.W.
G. J. McCarron,	Vice President, " " "
V. G. Wilson	Local 26, "
J. Huggins,	President, Local 283, C.B.ofR.T.&G.W.
	Toronto
M. Bennett	Local Chairman, Local 283, C.B.ofR.T.&G.W.

AWARD OF THE ARBITRATOR

There is no question as to the propriety of the grievors' displacement in the first instance. Being displaced, they were entitled to exercise their seniority rights under article 13.3 (a), and the only question is to the manner of exercise of those rights.

The material provisionsof article 13.3 are as follows:

> "13.3 An employee whose position is abolished or who is displaced from his permanent position may:
>
> (a) Displace a junior employee in his own seniority group, for whose position he is qualified, or ...''

It is the union's contention that the grievors may, by virtue of this provision, select those Junior employees to be displaced. In the company's view, the right to displace "a junior employee" cannot be interpreted so as to give a displaced employee such complete freedom of choice.

There are a number of questions which might arise with respect to the exercise of seniority rights under article 13. The decision in the instant case, therefore, goes no further than to determine the particular question in issue, having regard to the circumstances of the case. The case referred to at the hearing was that of grievor Harris, although the circumstances of his case are similar to those of Mr. Nedelcoff's case, and the decision in one case will, it is agreed, be binding in the other. Mr. Harris sought to displace Mr. Kurzlo, a Warehouseman Grade 3 in the Concord Terminal, having Saturday and Sunday as his rest days, on a shift beginning at 7:30 a.m. It seems there were some 16 persons employed on that shift, working that schedule, at the Concord Terminal. Of these, Mr. Kurzlo was the senior, while Mr. Paterson was the junior. The company allowed grievor Harris to displace Paterson, not Kurzlo. It is to be noted that Paterson was the Junior employee in the group of Junior employees having the Job characteristics sought by Mr. Harris. He was not "the" Junior employee in the entire seniority group, referred to in article 13.3. The right to displace only "the" junior employee might not be a very desirable one, if "the" Junior employee worked in an area or under conditions which could not reasonably be accepted by a senior displaced employee. That matter does not arise in this case, however, for the company, quite rightly, was prepared to accommodate the grievor by offering employment in an area and under conditions of his choice.

The only issue in this case is as to the right of the grievor to select the particular individual to be displaced. It is argued that this right arises by virtue of the provision in article 13.3 (a) that a displaced employee may himself displace "a Junior employee". In my view, however, it would strain this language to hold that it provides the right to displace "any junior employee, of the displaced employee's choosing". Although on the one hand the displaced employee may not be restricted to replacing only "the" junior employee, it is clear that on the other hand, the agreement does not give him an unfettered choice. The language of the collective agreement is general, and makes use of the indefinite article. In fact Mr. Paterson, as much as Mr. Kurzlo, was "a junior employee". While grievor Harris may have preferred the specific assignments which Mr. Kurzlo had, this was subject to change in any event. Both Kurzlo and Paterson worked at the location and on the shift sought by the grievor. As between them, the company acted reasonably in selecting the junior employee from being displaced, thus respecting the seniority rights of Kurzlo, while giving proper effect to the paramount seniority rights of the grievor.

In these circumstances, I can find no violation of the collective agreement. The grievance is accordingly dismissed.

J. F. W. WEATHERILL
ARBITRATOR