CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.229

Heard at Montreal, Tuesday, July 14, 1970

Concerning

CANADIAN NATIONAL RAlLWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAlLWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood alleges that the Company violated Article 15 of Agreement 5.1 when it permitted Mr. R.B. Rogelstad, a Terminal Traffic Manager, to exercise his seniority and displace an employee in the bargaining unit.

JOINT STATEMENT OF ISSUE:

Mr. R.B. Rogelstad, Terminal Traffic Manager, was examined by Company's physician on September 18, 1969. The Medical Department found Mr. Rogelstad unfit to peform his regular duties and recommended that he revert to a position where he would not have to assume responsibility. Accordingly he was released from "excepted" employment and, in accordance with Article 11.10 of the Agreement, displaced Mr. D. Hawley , Senior Administration Clerk. The Brotherhood contends that Article 15 of the Agreement should apply and the Brotherhood's concurrence should have been sought before displacement could be effected, that Mr. Rogelstad's displacement of Mr. Hawley be voided; and that Mr. Hawley be restored to his position of Senior Administration Clerk with reimbursement of lost wages.

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

There appeared on behalf of the Company.

D. O. McGrath	System Labour Relations Officer, C.N.R. Montreal
C. Campbell	Employee Relations Supervisor, C.N.R. London

And on behalf of the Brotherhood:

F. C. Johnston	Regional Vice President, CBRT&GW, Toronto
G. E. Bailey	Local Chairman, Local 108, CBRT&GW, Brantford

D. Hawley Secretary Local 108, CBRT&GW, Brantford

AWARD OF THE ARBITRATOR

Mr. Rogelstad, Terminal Traffic Manager at Sarnia, had acquired seniority under the collective agreement, and was No. 661 on the seniority list, in accordance with Article 11.10 of the collective agreement. That article provides as follows:

"11.10 The name of an employee who has been or is transferred from a position covered by this Agreement to an official or excepted position with the Company, or its subsidiaries, will be continued on the seniority list for the group from which transferred and shall continue to accumulate seniority while so employed. Such employee, when released from excepted employment, except at his own request or as provided in Article 12.19, may exercise his seniority rights to any position in his seniority group which he is qualified to fill. He must make his choice of a position, in writing, within ten (10) calendar days from the date of release from excepted employment and commence work on such position within thirty (30) calendar days from the date of release from excepted employment. Failing this, he shall forfeit his seniority and his name shall be removed from the seniority list."

As Terminal Traffic Manager at Sarnia he was in an "excepted position", and did not then come within the bargaining unit, although he did have certain rights pursuant to the agreement.

Mr. Rogelstad was "released from excepted employment" within the meaning of article 11.10. He was not released "at his own request" or "as provided in Article 12.19" (which deals with persons removed as a disciplinary measure), and he was therefore entitled to "exercise his seniority rights to any position in his seniority group which he is qualified to fill". Rogelstad did exercise these rights, and displaced Mr. Hawley, who was No. 682 on the same seniority list. This exercise of seniority rights falls squarely within the terms of article 11.10, and there was no violation of the collective agreement therein.

It was contended for the Union that the matter came within article 5 of the collective agreement, and that mutual agreement of the parties was required. Article 15.1 of the agreement is as follows:

"ARTICLE 15 - Rehabilitation

15.1 When mutually agreed between the proper officer of the Company and the Regional Vice-President of the Brotherhood, an employee who has become unfit * to follow his usual occupation may:

(a) Displace a junior employee in his own seniority group for whose position he is qualified, or

(b) be placed, when mutually agreed between the proper officer of the Company and the Regional Vice-President of the Brotherhood, in a position on his Region, notwithstanding that it may be necessary to displace an able-bodied employee to provide suitable employment for him.

* NOTE: The Company Medical Department will determine an employee's fitness to follow his usual occupation. The Regional Vice-President of the Brotherhood will be advised when a rehabilitated employee becomes fit to follow his usual occupation."

As it happens, it was determined by the Company that Mr. Rogelstad or the benefit of his future health, ought to revert to a position where he would not have to accept so much responsibility as in the position of Terminal Traffic Manager at Sarnia. It was for this reason that he was released from that excepted position. His entitlement to exercise his seniority rights, however, flows from article 11.10, which applies precisely, as I have said, to the circumstances of this case. In referring to "an employee who has become unfit to follow his usual occupation", article 15 refers to persons already performing jobs within the bargaining unit. Such persons would be without employment rights altogether were it not for article 15, which allows the parties to come to an agreement having regard to the circumstances in each case. In Mr. Rogelstad's case, he was returned to the bargaining unit (for reasons which are, strictly speaking, irrelevant), and article 11.10 provides for him individual rights which he was entitled to exercise without the agreement of either the company or the union.

In the circumstances of this case there has been no violation of the collective agreement, and the grievance must accordingly be dismissed.

J. F. W. WEATHERILL
ARBITRATOR