CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 233

Heard at Montreal, Wednesday, September 9th, 1970

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS,
EXPRESS AND STATION EMPLOYEES

DISPUTE:

That the Canadian National Railway Company should fill vacancy created by the illness of Mr. C. Adams, Warehouseman Grade 2-Clerk, at Clarenville, Newfoundland.

JOINT STATEMENT OF ISSUE:

Warehouseman Grade 2-Clerk Mr. C. Adams was ill from November 27, 1969 to March 15, 1970. The Brotherhood claims that the position should have been filled in accordance with Article 6.3 of the 6.1 Agreement and requested the Company to pay loss of wages to the senior laid off employee at that time.

The Company denied the Brotherhood's request.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) E. E. THOMS GENERAL CHAIRMAN	(SGD.) K. L. CRUMP ASSISTANT VlCE PRESIDENT LABOUR RELATIONS

There appeared on behalf of the Company:

P. A. McDiarmid	System Labour Relations Officer, C.N.R. Montreal
G. James	Assistant Labour Relations Officer, C.N.R. Moncton
H. E. Dickinson	Terminal Traffic Manager, C.N.R., St. John's, Nfld.
L. V. Collard	System Labour Relations Officer, C.N.R., Montreal

And on behalf of the Brotherhood:

E. E. Thoms	General Chairman, B.R.A.C., Freshwater, P.B Nfld.
M. Peloquin	Admn. Asst. to Int'l. Vice Pres., BRAC,

Montreal

AWARD OF THE ARBITRATOR

Article 6.3 of the collective agreement is as follows.

> "Temporary vacancies, newly created positions or seasonal positions, any of which are known to be of more than sixty calendar days duration, and vacancies in regularly assigned positions shall be bulletined in their respective seniority groups, it being understood that new positions of indefinite duration need not be bulletined until the expiration of sixty calendar days from date created. (Temporary positions of the lowest hourly rated employees in the seniority group need not be bulletined.)"

When Mr. Adams fell ill, his job may be said to have become temporarily vacant, at least in one sense of the word. As it happened, however, the company made the determination that it had sufficient staff to perform the work, and that no appointment was necessary. In this respect, there was no vacancy in the sense of a job of work to be done. The company asserts that there was a normal drop in traffic volume in that location at the time in question. It is not necessary for me to make any finding as to this. There was no appointment in Mr. Adams' absence, and indeed there was subsequently a reduction in the staff. It would appear that Mr. Adams was himself able to return to a job in his classification by virtue of his seniority.

The collective agreement does not set out manning requirements for any particular location. The effect of the success of the union's in this case would be to require the company to maintain the work force in any particular location at that strength which, from time to time, was authorized. Whether or not there existed a vacancy would be determined having regard to such an establishment. The company could protect itself simply by changing the establishment at any location. Thus whether or not a vacancy existed would depend only upon this technicality, and not upon the existence of a job of work to be done.

The union relied in part on the definition of "temporary vacancy" set out in article 2.2 of the collective agreement, as follows:

> "A "temporary vacancy" is a vacancy in a position caused by the regularly assigned occupant being absent from duty or temporarily assigned to other duties."

This definition sets out the circumstances in which a particular sort of vacancy occurs, and it is clear that vacancies such as this must be bulletined pursuant to article 6.3. lt does not deal with the underlying concept of a vacancy as a job of work to be done. The effect of article 2.2 and article 6.3 is to require the company to bulletin such a job, and to prevent it from making unilateral arrangements to have certain work done. Here the company did not attempt any such arrangements. The work available could be handled by the existing force, and there was no actual vacancy, temporary or otherwise, requiring to be bulletined.

Accordingly the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR