CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 254

Heard at Montreal, Tuesday, December 8th, 1970

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADlAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claim by the Brotherhood that certain employees should have been allowed to exercise their seniority in accordance with Articles 4.26(c) and/or 13.3 when the number of waiters in each dining car crew operating on Trains 11-12 and Trains 15-14 between Halifax and Montreal was reduced by one, effective February 11, 1970.

JOINT STATEMENT OF ISSUE:

As of February 11, 1970, six dining car crews operated in line on Trains 11-12 and the same number on Trains 15-14 between Halifax and Montreal. The two operations were covered by separate Operation of Run Statements.

When the complement of waiters in each crew was reduced by one, the six junior waiters covered by each O.R.S. were released from their position and allowed to exercise their seniority under Articles 4.26 (c) and/or 13.3.

Because of six junior waiters reduced on each set of trains were not distributed among the six crews in line, it was necessary for some employees remaining on the assignment to move from one crew to fill positions left vacant in another crew.

The Brotherhood claims that the latter employees should have been permitted to exercise their seniority in accordance with Articles 4.26 (c) and/or 13.3. The Company contends that these articles are not operable for these employees as their positions in the assignment were not abolished nor were they displaced from the assignment.

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

There appeared on behalf of the Company:

O. W. McNamara — System Labour Relations Officer, C.N.R.

	Montreal
M. A. Matheson	Labour Relations Assistant, C.N.R., Montreal
D. J. Matthews	Labour Relations Assistant, C.N.R., Moncton
J. A. Poirier	Operations Officer, Customer & Catering Service, C.N.R. Halifax

And on behalf of the Brotherhood:

J. A. Pelletier	National Vice President, CBRT&GW, Montreal
L. K. Abbott	Regional Vice President, CBRT&GW, Moncton

AWARD OF THE ARBITRATOR

The issue in this case is whether those employees who remained on the assignment in question, but who were moved from one crew to another to fill vacancies caused by the displacement of junior employees, were themselves "displaced" within the meaning of the collective agreement.

When the six Junior waiters on the assignments in question were displaced by reason of the reduction in crew size, they were of course entitled to exercise their seniority pursuant to article 15. Any emloyees whom they displaced would in turn be entitled to exercise seniority. The employees affected by this grievance, however, remained on the train to which they had been assigned, but were given other "positions" on the assignment to fill vacancies in certain crews caused by the displacement of the junior emoloyees. Thus, the employees affected by this grievance, while remaining on the same general assignment, were shifted over to runs not of their own choosing, on non-preferred days.

The employees in question were not, it is said, "displaced" by other employees; they were simply moved from one position on their assignment, to another. This move, however, was occasioned by the reduction of the size of crews governed by the assignment. Junior employees were certainly displaced, and the employees now in question were moved out of their own positions to fi11 the vacancies thus caused. Both parties rely upon a decision made in the Durant case, an award of Professor Laskin, as he then was, dated August 17, 1964, and involving similar language appearing in the collective agreement then in effect between these parties. There, the grievor was bumped, or displaced from his regular run by a senior employee. He was not allowed then to exercise his seniority rights, but was transferred to another position on the same assignment, while an employee Junior to him was displaced and allowed to exercise his seniority rights. In that case, there was no doubt that the grievor was "displaced", and that aspect of the case was regarded by the company as distinguishing it from the instant case. On analysis, however, it will be seen that the two cases are remarkably similar. The question was described by the arbitrator as "the claim of principle that a person in Durant's position is entitled to exercise his seniority broadly - - - and is not limited by pool considerations simply because he is one of a number of men on a particular run". In fact, the grievor there was "displaced" in the same manner as the grievors here claim to have been; the only difference is that in that case the displacement

occurred by virtue of the "intrusion" of another employee with higher seniority, whereas in this case it occurred by virtue of reductions in crew size. That distinction does not affect the actual situations of the employees concerned. In each case, the grievors were moved, unwillingly it seems, within their particular assignments or pools to other runs, while junior employees, ousted entirely from the assignments, had the benefit of choice in the exercise of their seniority rights.

As Professor Laskin quite rightly said, the governing factor, when all is said and done, is the language of the collective agreement. As in the Durant case, the provisions of the agreement here in issue (articles 13.3 and 4.26 (c)) speak of the displacement of employees "without regard to pool considerations - - - or, indeed, without any limitations other than those of qualification to perform work within the particular seniority group", to use Professor Laskin's language.

Article 13.3 refers to employees "whose positions are abolished or who are displaced". The employees affected by this grievance had particular positions on the assignment in question, and while the assignment was not abolished, their particular positions, in a very real sense, were abolished. That is why they were moved. It would be anomalous if the collective agreement were to provide higher rights to the junior employees, displaced by the grievors, than could be enjoyed by the grievors themselves, and the language of the collective agreement does not require that this anomalous conclusion be reached.

For the foregoing reasons, therefore, it is my conclusion that the employees affected by this grievance were in fact displaced in the circumstances described, and that they were entitled to exercise their displacement rights in accordance with the collective agreement. The grievance is accordingly allowed.

J. F. W. WEATHERILL
ARBITRATOR