CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.301

Heard at Montreal, Tuesday, September 14th, 1971

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim of Machine Operator M. Russo for fourteen (14) days' pay under the provisions of Section 4 Clause 6 (c) of Wage Agreement No. 14.

JOlNT STATEMENT OF ISSUE:

Section 4 Clause 6(c) of Wage Agreement No. 14 reads as follows:

> "(C) Temporary positions of temporary vacancies of under thirty days duration shall be filled by qualified laid off employees living at or near the work location provided they are immediately available. Laid off employees shall not be required to accept recall to vacancies of less than thirty days when they have steady employment elsewhere."

The Union contends that Machine Operator M. Russo who was recalled to work from layoff on August 3, 1970 and who was subsequently laid off after sixteen (16; days work is entitled to an additional fourteen (14) days pay in accordance with the provisions of Section 4, Clause 6 (c).

The Company contends that Section 4, Clause 6(c) only deals with filling positions of less than thirty (30) days and is not a guarantee of employment for any specified period of time.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) G. D. ROBERTSON SYSTEM FEDERATION GENERAL CHAIRMAN	(SGD.) E. L. GUERTlN REGIONAL MANAGER, OPERATlON AND MAINTENANCE

There appeared on behalf of the Company:

R. O'Meara	Labour Relations Assistant, C.P.R., Montreal
J. A. McGuire	Manager Labour Relations, C.P.R., Montreal
J. E. Cameron	Labour Relations Officer, C.P.R., Montreal
S. D. Chopra	Division Engineer, C.P.R., Montreal

And on behalf of the Brotherhood:

G. D. Robertson	System Federation General Chairman, B.M.W.E., Ottawa
A. Passaretti	General Chairman, B.M.W.E., Montreal
L. M. DiMassimo	Local Chairman, Local 190, B.M.W.E., Montreal

AWARD OF THE ARBITRATOR

From the parties' statements of fact, there is some conflict as to the precise understanding on which the grievor was recalled to work. He was recalled by Roadmaster R. Bruneau, and was advised that there was work available which was expected to last for one or two months. It was said that Bruneau "guaranteed" that there was at least thirty days' work, and on the other hand it is said that he told the grievor there was work available if he wanted to come in. lt may not have been put to the grievor that this was a case in which he was required to report for work under Section 4, Clause 6 (c) of the collective agreement, but the grievor, it seems, treated it as such and gave up other employment in order to return to work. It is not necessary to make any findings of fact as to the foregoing, and l do not do so. The issue is really one of the application of Section 4, Clause 6 (c) in circumstances where an expected vacancy does not materialize.

Clause 6 of Section 4 deals with the matter of recall of laid-off employees. It sets out the circumstances and methods by which employees are to be recalled, and the rights and obligations of employees in that regard. There is a distinction, which appears in Clause 6 (c) and elsewhere, between vacancies of thirty days or more, and those of less than thirty days. Subject to certain qualifications, employees may not be required to respond to a recall in cases where there is not at least thirty days' work available. In essence, the Union's contention requires that where an employee is recalled to work in circumstances where there is at least thirty days' work available, then there is an obligation to provide that much work, or to pay the employee in lieu thereof. That is, there must be a guarantee of employment for that period.

It is understandable that, where an employee is bound to accept recall, he would expect that that amount of work which made his recall mandatory would in fact be available. The collective agreement however, does not require the Company to guarantee that amount of work. Guaranteed employment is the sort of matter which requires to be set out in express language to that effect and that is simply not to be found in the collective agreement before me. The determination of the length of a vacancy must be made bona fide on the basis of the situation as it exists at the time the vacancy is to be filled, where that is done, there is no obligation, as the collective agreement now stands, to retain employees at work if in fact, as matters turn out, the anticipated work is not available.

In the instant case, therefore, putting the Union's case at the highest, the collective agreement simply does not provide a basis for granting the relief sought. Where the work to which the grievor was recalled was no longer available, he was in the same situation as any other employee with respect to the exercise of seniority rights, but

was in no better position, and was not entitled to a guarantee of work.

For the foregoing reasons the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR