CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 311

Heard at Montreal, Wednesday, October l3th, 1971

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claim of the Brotherhood that the Company violated Article 12.16 of Agreement 5.1 When it refused to compensate Mr. H. Lory for taking a qualifying medical examination.

JOINT STATEMENT OF ISSUE:

Mr. H. Lory applied for a position of Equipment Operator in the Express Terminal at Toronto. Medical fitness is a qualification for such position and for this reason Mr. Lory was given a medical examination by the Company doctor before being assigned to the position. The Brotherhood claims that the medical examination was a demonstration of Mr. Lory's ability to perform the work and in accordance with Article 12.16 he should be compensated for one hour at punitive rates for time so spent. The Company denied the claim.

| FOR THE EMPLOYEES: | FOR THE COMPANY: |
|---|---|
| J. A. PELLETlER (SGD.) | (SGD.) K. L. CRUMP |
| NATIONAL VICE PRESIDENT | ASSISTANT VICE PRESIDENT - LABOUR RELAT INS |

THERE APPEARED ON BEHALF OF THE COMPANY:

| | | |
|---|---|---|
| D. O. McGrath | - | System Labour Relations Officer, C.N.R., Montreal |
| A. D. Andrew | - | System Labour Relations Officer, C.N.R., Montreal |
| W. Wilson | - | Labour Relations Assistant, C.N.R., Toronto |

And on behalf of the Brotherhood:

| | | |
|---|---|---|
| J. A. Pelletier | - | National Vice President, C.B.R.T., Montreal |
| J. D. Hunter | - | Regional Vice President, " , Toronto |
| T. N. Stol | - | Local Chairman, Local 26, " , " |

AWARD OF THE ARBITRATOR

Article 12.16 of the collective agreement is as follows:-

> 12.16 An employee, who is assigned to a position by bulletin, will receive a full explanation of the duties of the position and must demonstrate his ability to perform the work within a reasonable probationary period up to 30 working days, the length of time dependent upon the character of the work. Any extension of time beyond 30 working days shall be locally arranged. Failing to demonstrate his ability to do the work he shall be returned to his former position without loss of seniority and the employee so displaced will be allowed to exercise his seniority.

The grievor applied for and was awarded a posted job. He was of course entitled to the benefit of article 12.16, but the claim in this case does not really relate to the benefits provided by that article. As the company properly pointed out, article 12.16 refers to the "post-appointment" phase of awarding an employee a vacancy; it is article 12.12 which deals with the "pre-appointment" phase.

The question, however, is not really one of the mechanics of filling vacancies, but one of entitlement to payment for time spent on the company's business. Under article 12.12, the company is required to fill vacancies or new positions by awarding the job to "the senior applicant who has the qualifications required to perform the work". Management is to be the judge of qualifications. In exercising that function, management is entitled to require employees to undergo reasonable and proper tests. For some occupations, no doubt an employee's physical condition may properly be considered, and to this end, it is my view that the company could properly require an employee to pass a medical examination as a condition of his assignment to a particular job. What is in question here is not the right of the company to require a medical examination, but rather the entitlement of an employee to be paid in respect of the time spent undergoing the examination.

In my view the question is simply whether while he is undergoing such an examination an employee should be said to be "at work" in accordance with the instructions of his employer. An employee may, of course, be at work and subject to the direction of his employer even when he is not carryiny out tasks relating to his own classification. A similar question was dealt with in Case No. 122, where it was held the grievor was entitled to payment for time spent in waiting for and taking a test of qualifications for a job he sought. In that case, as in this, it was a matter of the employee's being required by his employer to spend time on a matter which related to his work and was within the course of his employment. Here, the company required the grievor to take a medical examination in order that it might efficiently carry out its"function of assessing his qualifications. This is scarcely the same as the situation in Case No. 220, where an employee, instructed to report

for a disciplinary investigation after his regular hours of duty was held not entitled to payment. The analogy between the instant case and the case of some other sort of test of job qualifications is, in my view, clear.

For the foregoing reasons, the grievance is allowed.

J. F. W. WEATHERILL
ARBITRATOR