CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.376

Heard at Montreal, Tuesday, September 12, 1972

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Time claim submitted by Porter M.J. Boudreau assigned to the Spare Board at Moncton in Customer and Catering Services.

JOINT STATEMENT OF ISSUE:

On September 29, 1971, Mr. W.S. Maxell who was called for service on Train No. 14 and Mr. C.R. Phillips who was called for service on Train No. 11 were allowed to exchange assignments.

The Brotherhood contends that this exchange of assignments was not in accordance with Article 7 of Agreement 5.8 and that Porter Boudreau is entitled to the time claimed.

The Company claims there was no violation of any article or sub-article in Article 7 and the claim was declined.

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

There appeared on behalf of the Company:

O. W. McNamara	System Labour Relations Officer, C.N.R., Mtl.
C. C. Bright	Manager, Customer & Catering Services, CNR, Mtl.
E. D. MacDonald	Labour Relations Assistant, C.N.R., Moncton
R. G. Cunningham	Crew Supervisor, Customer & Catering Services, C. N. R., Moncton

And on behalf of the Brotherhood:

L. K. Abbott	Regional Vice President, C.B.R.T., Moncton
J. A. Pelletier	National Vice President, C.B.R.T., Montreal
M. J. Boudreau	(Grievor)

AWARD OF THE ARBITRATOR

Article 7 of the collective agreement provides for the operation of a spare board on a first-in, first-out principle. In accordance with this article, Porter W. Maxwell was called for service on Train No. 14, ex Moncton 0955 hours September 29. Later, Porter C. R. Phillips was assigned to Train No. 11 ex Moncton 2105 hours the same day.

The grievor arrived in Moncton at 0925 hours September 29 on Train No. 14. He would, it seems, have been entitled to an assignment following those of Messrs. Maxwell and Phillips. There is a difference in the evidence as to whether or not, and where and when Mr. Boudreau reported. For the purposes of this case I am prepared to consider the matter on the basis of Mr. Boudreau's evidence. I do not, however, make any determination as to the veracity or accuracy of the testimony of either the grievor or the crew supervisor both of whom, in my view, presented their evidence sincerely and honestly. In any event, Mr. Boudreau was assigned to Trains Nos. 14 - 18 ex Moncton September 30 and to certain other runs thereafter.

If the foregoing assignments had been carried out as indicated there would have been no cause for complaint. Mr. Phillips, however, indicated some reluctance to go out on Train No. 11 because of the length of the trip and the insufficiency of his supply of clean clothing. He did not, however, refuse the assignment. If he had done so, then it may be that the grievor would have been entitled to be offered it. That is a question which need not be determined in this case. While, as I have noted, Mr. Phillips did not refuse his assignment, Mr. Maxwell apparently volunteered to exchange assignments with him. Just how the suggestion arose is not material. That Messrs Phillips and Maxwell exchange their assignments was acceptable to the Company and it was done.

It is true that the collective agreement does not provide for an exchange of assignments as between employees, nor indeed would one expect to find such a provision. The matter of assignments from the spare board is dealt with in Article 7, and any arrangement between employees, or between the Company and employees which would affect the rights of another employee would be improper. An exchange of assignments, however, is not necessarily a violation of the collective agreement. In my view, it would be such only if the rights of an employee were to be adversely affected thereby. This case may be distinguished from the Federal Paper Board Co. Case, 53 L.A. 1147, referred to by the Union, where it was held that an employee in one classification, unable to continue his work by reason of injury, could not exchange jobs with an employee in another classification who was capable of performing his work. I agree, with respect, with the decision in that case, since the result of the exchange was to deprive another employee in the first classification of a work opportunity. That cannot, however, be said to be the situation in the instant case. Here, no one whose entitlement to an assignment arose after the grievor was given any preference over him, both Messrs Maxwell and Phillips were entitled to earlier calls. Neither refused a call, which might as I say, have accelerated the grievor's right to be called. The exchange was simply made as between two employees to whom assignments had been given, and for the convenience of one of them. The grievor's position was not affected

in the least.

In the circumstances of this case, then, it must be concluded that there was no violation of the collective agreement, and the grievance must accordingly be dismissed.

J. F. W. WEATHERILL
ARBITRATOR