CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 407

Heard at Montreal, Tuesday, May 8th, 1973

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

The Brotherhood claims the Company violated Article 19.6 in the 6.1 Agreement and Article VII in the January 29, 1969 Master Agreement when it abolished the Claims Inspector's position advertised on Area Bulletin No.18/1, October 2, 1972.

JOINT STATEMENT OF ISSUE:

Area Bulletin 18/1, Oct. 2, 1972 advertised a Claims Inspector's position at Grand Falls.

Applications were received by the Company for the position, and Mr. A.J. Cook was one applicant.

Seven days after the bid was closed, the position was cancelled and changed to a Clerk Typist position.

The Brotherhood claimed violations of Article 19.6 in the 6.1 Agreement and Article VII in the January 29, 1969 Master Agreement and demanded re-establishment of the Claims Inspector's position; award the position to the senior qualified applicant and compensate him for loss of wages on account of the non-appointment.

The Company denied the Brotherhood's demand.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) E. E. THOMS GENERAL CHAIRMAN	(SGD.) G. H. BLOOMFIELD ASSISTANT VICE-PRESlDENT - LABOUR RELATIONS

There appeared on behalf of the Company:

P. A. McDiarmid, 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.

AWARD OF THE ARBITRATOR

Article 19.6 of Agreement 6.1 is as follows:

> "19.6 Established positions shall not be discontinued and new ones created covering relatively the same class of work for the purpose of reducing the rate of pay."

On October 2, 1972, the Company posted a bulletin advertising a Claims Inspector's position. Subsequently, and without appointing any of the applicants to the position, the position was cancelled. This was done on October 16, 1972. After that, on October 31, 1972, a position of Clerk Typist was bulletined.

The position bulletined was, as is said in the Joint Statement of Issue, "changed" to that of Clerk Typist, a lower-rated position. If this position covered relatively the same class of work, and if it was done for the purpose of reducing the rate of pay, then there would have been a violation of Article 19.6, and the grievance would be allowed. The work of a Claims Inspector includes inspection of express and automobile shipments, recording exceptions, tracing over and short shipments, related correspondence and handling of waybills. After the bulletin of October 2, 1972, was posted, the Company reviewed the actual Workload of the postion at Grand Falls, and determined that a full time Claims Inspector was not required. Accordingly, certain of the functions of the job were assigned to persons classified as Cashier (a job at the same level as Claims Inspector) or as Administration Clerk (a higher-rated job), while others were assigned to the job of Clerk-Typist (a lower - rated Job).

As a result of this reassignment of duties it was necessary to establish a new position of Clerk-Typist. This position was bulletined and eventually filled. From the material before me, it does not appear that the Clerk-Typist so appointed is required to perform "relatively the same class of work" as the Claims Inspector whose job was abolished. The Clerk-Typist performs the lower-rated functions of that job, but there is nothing before me to support the conclusion that the Clerk-Typist is really performing the Job of a Claims lnspector. While the Joint Statement of Issue sets out that "the position was cancelled and changed to a Clerk-Typist position", this does not mean simply that a different title was given to the same Job, if that were so, then as I have said the grievance would succeed. Rather, it means that a different Job was posted.

For the foregoing reasons, it is my conclusion that there was no violation of Article 19.6 of the collective agreement. The Brotherhood also rely on Article VII of the January 29, 1969 Master Agreement which provided for not less than four days' advance notice to be given when regularly assigned positions are to be abolished (with certain exceptions not here material). Whether or not the Claims Inspector's position, Which was advertised as a temporary one, can be said to be a "regularly assigned position", it would appear that in any event the requirement of notice was complied with. The position was terminated on November 20, 1972, whereas the

cancellation of the bulletin was posted on October 16, and the grievance processed shortly after that. There has, therefore, been no violation of Article VII of the Master Agreement.

It was also urged by the Union that the Company having once posted the bulletin, was obliged to fill the vacancy therein referred to. Since the collective agreement does not require the Company to have performed work which it does not want performed, it is difficult to see what benefit this would be to employees. In any event, while it is clear that the Company must post vacancies - that is where there is a job of work to be performed the Company must have it performed in compliance with the provisions of the collective agreement - the determination that there is a vacancy at one time does not imply that such vacancy will continue. In the instant case, the Company no longer required the job of a Claims lnspector to be done. Consequently, it cancelled the bulletin with respect to that Job. There was no violation of the collective agreement in this. The International Nickel case 16 L.A.C.216 (note), referred to by the Union, is distinguishable from the instant case in that there, the Company cancelled a temporary Job posting in the mistaken belief that the regular incumbent was about to return. The job was, in fact, still vacant, and it was held that it was improper to post it a second time to the prejudice of the senior qualified applicant on the first posting. In the instant case, there was, in fact, no vacancy because of the rearrangement of the work load.

In the Union Gas Company case, 24 L.A.C.159, it was held that Company was not entitled to cancel a job posting, having determined that vacancies existed. It was recognized, as earlier cases had held, that it was within the discretion of management to determine whether a vacancy did or did not exist. The award would appear to give effect to the right of an employee under the collective agreement there in question to have a determination made as to his application for a posted job. Such determination might be of value to him. It is to be noted, however, that the case deals only with the matter of the posting itself, it did not require the Company to assign an employee to work which in fact was not available. Whether or not the Union Gas decision should be followed, it does not affect the result of the instant case, which deals with the abolition of one job and the establishment of another.

For the reasons set out above, the abolition of the Claims Inspector's job was not in violation of the collective agreement, and the grievance must accordingly be dismissed.

J. F. W. WEATHERILL
ARBITRATOR