CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 458

Heard at Montreal, Tuesday, September 10, 1974

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF RAILWAY, AIRLlNE AND STEAMSHlP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

DISPUTE:

The Brotherhood claims that Express employees, G. Turner, P. Whelan, W. Furlong, S. Spurrell, A. Stevenson, E. Hollett and all other like employees who may have been laid off were entitled to four days' notice as stated in Article 8.1.

JOINT STATEMENT OF ISSUE:

Messrs. G. Turner, W. Furlong, S. Spurrell and E. Hollett were advised under date of December 4, 1974 that they would be laid off with the completion of their shift on December 7, 1973.

Mr. Whelan was advised on December 5, 1973 that there would be no work for him on December 7, 1973 and to return for work on December 7, 1973.

Mr. Whelan was assigned his position by Advice Notice No. 63 while the remaining four grievors were not assigned by Advice Notice.

All five grievors worked consecutive work weeks and their starting time and ending time for each day was the same.

The Brotherhood claimed one day's wages for all five grievors.

The Company denied the request.

| FOR THE EMPLOYEES: | FOR THE COMPANY: |
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| (SGD.) E. E. THOMS<br>GENERAL CHAIRMAN | (SGD.) G. H. BLOOMFIELD<br>ASSISTANT VICE-PRESIDENT<br>LABOUR RELATIONS |

There appeared on behalf of the Company:

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| A. D. Andrew | System Labour Relations Officer, C.N.R., Montreal |
| R. W. Cox | Assistant Terminal Traffic Manager, C.N.R., St. John's, Nfl |
| W. D. Agnew | Labour Relations Assistant, C.N.R., Moncton |

And on behalf of the Brotherhood:

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| E. E. Thoms | General Chairman, B.R.A.C., Freshwater, P.B., Nfld. |
| M. J. Walsh | Local Chairman, Lo.443, B.R.A.C., St. John's, Nfld. |
| R. Byrne | Local Chairman, Lo.77, B.R.A.C., Corner Brook, Nfld. |

AWARD OF THE ARBITRATOR

Article 8.1, as amended, provides as follows:

> "When reducing forces, as much advance notice as possible will be given the employees affected. Not less than four days advance notice will be given when regularly assigned positions are to be abolished, except in the event of a strike or a work stoppage by employees in the railway industry, in which case a shorter notice may be given. Senior employees with sufficient ability to perform the work will be retained."

The issue to be determined is whether the grievors, who admitted did not receive four days' notice of layoff, held "regularly assigned positions" which were abolished. It is true that the grievors, prior to their layoffs, had been assigned to their jobs on a "regular" basis, in that they worked standard hours, on a fixed schedule, for a number of consecutive weeks. There was thus a certain obvious regularity to their assignments. In the collective agreement however, a phrase such as "regularly assigned positions" has a certain technical meaning, and while the phrase is not explicitly defined in the agreement its meaning can and must be determined in the context of the agreement as a whole.

Article 8.1 does not require that four days' notice be given to all employees whose positions are abolished, but only to those holding "regular assigned positions". The matter of bulletining and filling positions is dealt with in Article 6. Article 6.1 provides for the bulletining and filling of positions generally, and Article 6.2 sets out certain exceptions, that is, case of positions that are not required to be bulletined. These include temporary vacancies, newly-created positions and seasonal positions "when known to be for sixty calendar days duration or less", and in such cases no bulletin is necessary. Assignment to such jobs may be made by way of "advice notice". It is my view that jobs assigned in this way are to be contrasted with "regularly assigned positions". Certainly a new job, a seasonal job or even a temporary job may well have sufficient "regularity" in respect of hours and days of work to justify one's describing it as "regular" work, but it would not, in my view be a "regularly assigned position" within the meaning of the collective agreement, where that phrase is used in a particular way, and in contrast with the terms used in Article 6.2. The same contrast in the use of these terms appears in Article 6.3.

Only one of the grievors, it seems, was provided with any sort of formal appointment. That was Mr. Whelan, who was appointed by way of "advice notice" on October 17, 1973, to a position of Warehouseman

Grade 2 said to be of thirty days' duration or less. The other grievors were in fact in similar situations, although no advice notice was issued in their cases. In the circumstances of this case they should be treated as though their assignments were made by advice notice. Certainly they did not hold bulletined positions.

It seems clear that the assignments in question were, and were known to be of a temporary nature. Where such assignments extend beyond the period originally indicated, questions may arise as to the requirement of bulletining under Article 6.3 or perhaps Article 6.1. Such questions do not, however, arise in the instant case, which arises as a complaint by employees holding temporary positions that they did not receive proper notice of layoff. Certainly such persons are members of the bargaining unit and entitled to the benefit of the provisions of the collective agreement generally. Unless, however, they can properly be said to hold "regularly assigned positions" within the meaning of Article 8.1, then those benefits would not include entitlment to four days' notice of layoff.

For the reasons set out above, it is my view that under this collective agreement a "temporary" position is not the same as a "regularly assigned" one, and that the requirement of notice which would apply in the latter case does not apply in the former. There was thus no violation of Article 8.1 and the grievance must be dismissed.



J. F. W. WEATHERILL
ARBITRATOR