CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 492

Heard at Montreal, Tuesday, January 14, 1975

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

The Brotherhood claims violation of Article 8.5 in the 6.1 Agreement when it dispensed with the services of Warehouseman Wayne Young at Corner Brook.

JOINT STATEMENT OF ISSUE:

Warehouseman Wayne Young, while protecting spare and relief work, last worked with the Company September 13, 1973. The reason for his absence was alleged illness. The Company claimed that he failed to protect his position under Article 8.5 and dispensed with his services in November 1973.

The Brotherhood claims that Mr. Young was ill and did present doctor's certificates which were unacceptable to the Company. The Brotherhood also claims that the Company did not notify Mr. Young to return to work.

The Brotherhood has demanded reinstatement of Mr. Young with al loss of wages.

The Company has declined the demand.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD) E. E. THOMS	(SGD.) S. T. COOKE
GENERAL CHAIRMAN	ASSISTANT VICE-PRESIDENT
	LABOUR RELATIONS

There appeared on behalf of the Company:

A. D. Andrew	System Labour Relations Officer, C.N.R., Montreal
W. D. Agnew	Labour Relations Assistant, C.N.R., Moncton
R. A. Bartlett -	Operations Supervisor, C.N.H., Corner Brook, Nfld.

And on behalf of the Brotherhood:

E. E. Thoms	General Chairman. B.R.A.C., Freshwater, P.B.,

Nfld.

T. F. Snow — Local Chairman, Lo.48, B.R.A.C., Lewisport, Nfld.

R. Byrne — Local Chairman, Lo.77, B.R.A.C., Corner Brook, Nfld.

AWARD OF THE ARBITRATOR

Article 8.5 of the collective agreement is as follows:

> "8.5 An employee who elects to take spare or relief work at the location at which he was displaced shall forfeit his seniority if he fails or refused to apply for a bulletined position at such location, except Office Boy or Messenger, or if on eight hours' notice he fails or refused to report for duty When called unless prevented from doing so by reason of illness or other cause for which leave of absence has been or is granted.

ln the instant case, it is the Company's position that the grievor "forfeited his seniority", and was subject to loss of employment when he failed or refused, on eight hours' notice, to report for duty when called.

The grievor was on spare and relief work, and subject to call. In my view the Company did call the grievor at the location know, to them, although contact could not be made with him personally. He was "called" within the meaning of Article 8.5, but he did not report. The question which arises is whether he was prevented from doing so "by reason of illness or other cause for which leave of absence has been or is granted".

On November 22, 1973, the Company made an attempt to call the grievor for work. It was advised that he was away. He had last worked for the Company on September 13, 1973, and had later produced a certificate dated September 18, stating he would be unfit for work until September 25. No other authorization or explanation was produced between then and November 22. Following the grievor's failure to respond for a call that day, he was considered as no longer employed.

In such circumstances there is an obligation on the employee to bring himself within the scope of the exception to Article 8.5, that is, to show that he was prevented from accepting the call for the reasons there cited. ln the instant case, the grievor appeared at the Company office on about December 18, 1973, with an application for weekly indemnity benefits. This application contained a doctor's statement that the grievor had been disabled from September 12 until December 12. The grievor was, however, advised that he was no longer an employee, he was paid his vacation pay and his file was closed.

No further step was taken until April 9, 1974, when the matter of the grievor's being restored to his job was raised by the Union. lt would seem that any grievance relating to the grievor's status would then be untimely, but the Company considered the matter nevertheless, and there is no objection raised in that regard in this case. ln the

course of the grievance procedure, the Company indicated (quite properly, if the matter was to be considered at all) that it would re-consider the matter on being furnished with a case history of the grievor's illness. In response to this, the grievor provided a doctor's certificate dated August 5, 1974 which stated that he had been incapacitated from September 14, 1973 until April 14, 1974, that he had undergone surgery on November 29, being discharged on December 1. The doctor's certificate went on to indicate that the grievor had suffered from some recurrent disorder up to the middle of April. The certificate seems to have been illegible as to what the disorder was.

Clearly, the certificate finally proferred by the grievor was unsatisfactory both because of its illegibility and because of its noncongruence with the other statements he had filed. Under Article 8.5 an employee is under an obligation to satisfy the Company that he has good reason, by way of illness or some other ground wwhich would justify a leave of absence for not being available to work. In this case, the grievor's efforts in this regard were untimely and inadequate. He has still not made it clear to the Company just why he could not work, and the Company has thus had no chance to evaluate whatever reasons there may have been.

The grievor's case has not been brought within the exception to Article 8.5, and he was therefore subject to the general provisions of tha Article. Accordingly, the grievance must be dismissed.

J. F. W. WEATHERlLL
ARBITRATOR