CANADlAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 518

Heard at Montreal, Wednesday, September 10, 1975

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(Hotel Department)

and

CANADlAN BRlTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DlSPUTE

Grievance of Miss R. Beauchamp when the Company allegedly violated Article 4.15.

JOlNT STATEMENT OF ISSUE

On December 11, 1974 the Company assigned Miss R. Beauchamp to the station rotation practice in effect for most of the waitresses in the Cock and Lion Lounge of the Chateau Laurier Hotel.

The Brotherhood claims that the assignment of Miss R.Beauchamp to the station rotation practice is a violation of Article 4.15 of the collective agreement.

The Company denies there is a violation of Article 4.15.

FOR THE EMPLOYEE	FOR THE COMPANY
(SGD.) D. NICHOLSON NATIONAL VICE-PRESlDENT	(SGD.) S. T. COOKE VICE-PRESIDENT, LABOUR RELATlONS

There appeared on behalf of the Company:

B. Noble	System Labour Relations Officer, C.N.R., Montreal
G. Wheatley	Manager, Personnel & Labour Relations, C.N.R., Montreal

And on behalf of the Brotherhood:

J. H. Wynter	Legislative Director, C.B.R.T., Ottawa
L. St. Pierre	Representative, C.B.R.T., Ottawa
G. Danis	Local Chairman, C.B.R.T., Lo.270, Ottawa
E. Beaulne	Shop Steward, Lo.270, C.B.R.T., Ottawa
R. Beauchamp	(Grievor) - Ottawa

AWARD OF THE ARBlTRATOR

Article 4.15 of the collective agreement provides as follows:

"4.15 Within any particular classification within a department, preference shall be given in accordance with seniority as to allocation of days off, shifts, holidays and the like, subject to the employee exercising seniority having the required qualifications.''

The grievor's classification is that of Waitress, in the Food and Beverage Department. She has worked in the Cock and Lion Lounge for many years, and is the senior employee there. For some seven years, until the change here complained of, she was assigned to a group of tables in the lounge known as station two, on a permanent day shift basis. The general question raised by the grievance is whether, under Article 4.15, an employee would have any right to exercise seniority with respect to assignment to any particular work station. The more particular question in the instant case is whether the grievor is entitled to be assigned to station two on a permanent day shift basis.

Article 4.15 provides for the exercise of seniority rights in circumstances not dealt with in many collective agreements, allowing not merely job security, but the exercise of preference with respect to certain working conditions. These include days off, shifts, holidays "and the like". In my view the phrase "and the like" should not be given a restrictive interpretation, and limited, as the Company suggested, to matters related to time. I see no reason why it could not be read so as to permit the exercise of choice of work assignments - where these exist on a regular and continuing basis. The effect of the provision is to establish seniority as a criterion of choice where reasonable scope for the exercise of choice exists. Where, as was the case for many years, employees were assigned on a regular basis to a particular work station, it is quite consistent with Article 4.15 to give senior employee their choice of such assignments. This is particularly so where, as here, the employee's earnings may vary considerably according to the work station to which she is assigned.

As a general matter, then, it is my view that, under this collective agreement, an employee may assert seniority rights in claiming entitlement to be assigned to a particular work station. As to the particular claim now made by the grievor, however, it is necessary to consider the actual changes made by the Company in its operation of the Lounge. If the situation had remained unchanged, but the grievor had simply been assigned to another work station while a junior employee was assigned to station number two, I would allow the grievance, for the reasons I have given. In the instant case, however the situation did change. Stations were considered as falling into two groups one group of stations staffed by persons working on a split-shift basis, the other group staffed by persons working on a regular shift basis, rotating as between stations.

The determination of methods of operation, including the determination of what is "in accordance with its obligations to provide the best possible service to its customers" is a management function. Where an employee is adversely affected by a change in operating methods which is brought about by the bona fide exercise of the management function, as would appear to be the case here, then

there is, under Article 4.15, no ground for relief unless it is shown that there is scope, under the new arrangement, for the exercise of seniority rights. That is, the grievor was not entitled to insist that the Company continue to operate station two on a regular - shift, permanent assignment basis. The Company has the right to establish and to change the arrangement of the Lounge and of the work stations, and the system of staffing. Once it establishes any such arrangement or any such system of staffing, however, it is open to the employees, in accordance with their seniority, to select those places in the system which they prefer. If the system is a rotational one, then all employees are treated equally, and there would be no scope for the exercise of choice. Where, however, the situation is such that some assignments (made on a regular basis) are preferable to others, then the senior employees are entitled to exercise their preference.

In the instant case, where the Company has determined that station two is to be serviced by employees working on a split-shift schedule, assignment of the grievor to that station on her former schedule is no longer possible. The right of selection given employees under Article 4.15 does not include the right to insist on the retention of any particular operation or method. While the grievor has no doubt been adversely affected by the changes the Company has instituted, those changes were in the proper exercise of management rights, and were not in violation of the collective agreement.

To the extent that the grievance seeks the re-assignment of the grievor to station two on a regular shift basis, then, it must be dismissed. The grievor is, however, entitled to exercise her seniority to claim any of the new assignments (in accordance with the system which the Company has instituted which may be preferable to her.

J. F. WEATHERHILL
ARBITRATOR