CANADIAN RAlLWAY OFFICE OF ARBITRATION

CASE NO. 540

Heard at Montreal, Tuesday, April 13, 1976

Concerning

CANADlAN NATlONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood alleges that the Company violated the provisions of Article 13.2 in not providing the Local Chairman with copies of notices of staff reduction in a timely manner and also that it violated the provisions of Article 9.17 when it did not pay annual vacation due the employees affected when no work was required of their positions during a work stoppage by another union.

JOlNT STATEMENT OF ISSUE:

On January 24, 1975, the Company served notice on certain employees in the Passenger Service Centre, Station Services Section and in the Transportation Centre, all at Edmonton, that no work would be required on their positions due to the withdrawal of services by employees represented by another union in the railway industry. The employees affected by such notices had seniority rights to be exercised under Article 13 of Agreement 5.1 but some lost from one to four days of wages while exercising their seniority rights or due to failure to exercise their seniority rights. At the option of the employee the Company paid vacation time to cover any days of lost wages.

The Brotherhood alleges that the Company violated Article 13.2 of the agreement in that copies of the employee notices were not provided to the Local Chairman in a timely manner. The Brotherhood further alleges that the Company violated Article 9.17 of the agreement when it did not automatically pay the employees vacation time due them on serving the notices. The Brotherhood contends that because of these alleged agreement violations the employees cannot be considered as having been laid off, rather they were following Company instructions to remain away from work and that under these circumstances, the employees should be paid for lost time.

The Company contends that it sent copies of the employee notices to the Local Chairman and that Article 13.2 does not provide for any monetary penalty in regard to timely receipt of such notices by the Local Chairman. The Company further contends that these employees were not laid off since the exercise of seniority provisions in Article 13.3 had not been exhausted, and thus Article 9.17 could not have been violated since the provisions of that Article (9.17) only become operative when the employee has fully exercised seniority rights under Article 13.3 and is placed on the area laid-off list.

The Company therefore denies that these employees have a proper claim to wages for time lost during this work stoppage in the exercise of their seniority or due to failure to exercise their seniority. This grievance was processed through the various steps of the grievance procedure and ultimately to arbitration.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(Sgd.) J. A. Pelletier National Vice-President	(Sgd.) S. T. Cooke Assistant Vice-President Labour Relations

There appeared on behalf of the Company:

P. A.	McDiarmid	System Labour Relations Officer, C.N.R., Montreal
D.	Noyes	Agreements Analyst, C.N.R., Edmonton

And on behalf of the Brotherhood:

R.	Henham	Regional Vice-President, C.B.R.T., Vancouver
H.	Critchley	Representative, C.B.R.T., Edmonton
N.	Kowalchuk	Local Chairman, C.B.R.T., Edmonton
W.	Matthew	Regional Vice President, C.B.R.T., Winnipeg
J. A.	Pelletier	National Vice President, C.B.R.T., Montreal
L. K.	Abbott	Regional Vice President, C.B.R.T., Moncton

AWARD OF THE ARBITRATOR

This case involves two distinct claims, one based on article 13.2 of the collective agreement and the other based on article 9.17. I shall deal with each claim separately.

Article 13.2 provides as follows:

> "13.2 ln instances of staff reduction, four working days' advance notice will be given to regularly assigned employees whose positions are to be abolished, except in the event of a strike or work stoppage by employees in the railway industry, in which case a shorter notice may be given. The Local Chairman will be supplied with a copy of any notice."

ln the cases of two of the three groups of employees covered by this grievance, the Transportation group and the Station Services group, this provision was not complied with. There appears to have been an attempt at compliance, in that copies of the notices were mailed, but they were not received in timely fashion, and it is my view that it is the Company's obligation, if it seeks to give effective notice pursuant to article 13.2, to ensure that copies of such notice are in fact received by the Local Chairman. As was said in Case No. 517, the giving of such notice is a condition of the implementation of a staff reduction of this sort.

lt was argued that article 13.2 did not specify that notice must be

timely. It is clear to me, however, for the reasons mentioned in Case No. 517, that the purpose of such notice is that the Union be aware of the situation and be able to advise employees. The copy to be provided to the Local Chairman is not merely for record purposes. In these circumstances, untimely notice is no notice. Such is, in my view, the clear effect of the article. lt was also argued that the article did not specify any penalty for violation of its requirements. Again, it is not necessary that any penalty be specified. The requirement of notice, with copy to the Local Chairman is, as I have said, a condition of effective notice. Where that condition is not met, and no effective notice is given, then employees are not subject to loss of earnings through staff reduction. They are, therefore, entitled to compensation for losses flowing from the company's breach of the collective agreement.

ln the cases of employees in the Transportation group and the Station Services group, then, it is my conclusion that the grievance must succeed, and I award that they be compensated for time lost. These employees were under a duty to mitigate their losses, and the Company is entitled to set off any earnings made by those who did in fact exercise seniority against its liability under this award. Payments in respect of vacation pay, however, would not come under this head.

Article 9.17 is as follows:

> "9.17 An employee who is laid off shall be paid for any vacaticn due him at the beginning of the current calendar year not previously taken, and, if not subsequently recalled to service during such year, shall, upon application, be allowed pay in lieu of any vacation due him at the beginning of the following calendar year."

Under many collective agreements it might be that the employees concerned would be considered "laid off" within the normal meaning of that term in industrial relations. Under this collective agreement, however, there is a distinction between the abolition of a position and the eventual lay-off of an employee. Layoff does not occur, under article 13.3, until after the process described in that article has been exhausted. Here, it has not been shown that any employee was "laid off" as the term is used in the collective agreement. It may be that employees are off work for a certain period while they may seek to exercise seniority rights, but in my view article 9.17 does not contemplate that vacation pay should automatically become payable in such situations.

It is my conclusion that there was no violation of Article 9.17 in these circumstances.

Reference was made in argument to violation of the Job Security Agreement as well, but that is not an issue raised in the Joint Statement, and is not properly before me.

As noted above, the claim made under article 13.2 is, with respect to the two groups of employees noted, allowed.

J.F.W. WEATHERILL

ARBITRATOR