CANADlAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 570

Heard at Montreal, Wednesday, October 13,1976

Concerning

CANADlAN NATlONAL RAlLWAY COMPANY

and

BROTHERHOOD OF RAlLWAY, AIRLlNE AND STEAMSHlP CLERKS, FRElGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

DISPUTE:

Claim for one day's pay by Messrs. Larocque, Heffren, Haggith and Cornelius, Spare Telegraphers at London, Ontario.

JOlNT STATEMENT OF ISSUE:

On both December 13 and 14, 1976, the 0001 to 0800 hours shift and the 0800 to 1600 hours shift of the positions of Transportation Operator at London, Ontario were not filled while the regularly assigned employees were on annual vacation.

The claimant employees who were on the spare board each submitted claims for 8 hours on the ground that they should have been called to fill the vacancies. The Company declined the claims.

The Brotherhood maintains that in not filling the positions on the days in question the Company violated Articles 7.1, 11.5 and 13.1 of the Collective Agreement.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(Sgd.) G. E. Hlady General Chairman	(Sgd.) S. T. Cooke Assistant Vice-President Labour Relations

There appeared on behalf of the Company:

G. A. Carra	System Labour Relations Officer, C.N.R., Montreal
W. J. Rupert	Regional Rules Supervisor, C.N.R., Toronto

And on behalf of the Brotherhood:

G. E. Hlady	General Chairman, B.R.A.C., Barrie, Ontario
F. E. Soucy	National General Chairman, B.R.A.C., Montreal
T. C. Smith	General Secretary Treasurer, B.R.A.C., Montreal

AWARD OF THE ARBITRATOR

The positions in question were not abolished while the incumbents were on vacation. They were not filled, however, and certain of the duties which the incumbents would have performed were carried out by other employees. The grievors contend that they should have been temporarily assigned to fill the vacancies caused by the absence of the incumbents on vacation.

The articles of the collective agreement which are relied on are as follows:

> 7.1 Ten (10) days' notice will be given of the intention to abolish permanent positions and five (5) days' notice will be given of the intention to abolish temporary positions which were filled by bulletin. However, in the event of a strike or work stoppage by employees in the railway industry a shorter notice may be given.
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> 11.5 The hours of regular assignments including meal period will be specified by the Chief Dispatcher, will be the same on all days of the week except on swing assignments, and will not be changed without at least forty-eight (48) hours' notice. The meal hour may be changed one-half hour when necessary to meet operating conditions.
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> 13.1 Except as otherwise provided in Article 11.2, a work week of forty (40) hours consisting of five (5) days of eight (8) hours each is established with two (2) consecutive rest days, in each seven (7) subject to the following modifications: the work weeks may be staggered in accordance with the Company's operational requirements.

Article 7.1 deals with reduction in staff. In the circumstances of this case there was no reduction in staff and, as I have indicated, no abolition of assignments. The staff remained at the same level; certain members of the staff were not in fact at work on the days in question, but this was not due to a staff reduction, as that phrase is properly understood; it was due to vacations. The same circumstance could arise because of illness or some other such event.

As to articles 11.5 and 13.1, there was no alteration in scheduled hours in the work week; there was, as I have said, simply an absence.

This absence did not of itself necessarily create a "vacancy" which the company was under any obligation to fill. See, in this connection, Case No. 233. It does not appear that the position was in fact filled by the assignment of any particular individual so that it could be argued that there was in fact a vacancy. Rather, certain work of the position was assigned to other employees. Whether or not this imposed an unfair burden on them is not a question which falls to be determined in this case.

There was, in the circumstances of this case, no vacancy which the

company was obliged to bulletin, nor with respect to which the grievors had a claim pursuant to the collective agreement. Accordingly, the grievance must be dismissed.

J.F.W. WEATHERILL
ARBITRATOR