

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 588

Heard at Montreal, Tuesday, January 11, 1977

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL  
WORKERS

DISPUTE:

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Claim from wharf employee D. J. LeBlanc, Halifax, N.S., for  
unassigned work on December 5, 1975.

JOINT STATEMENT OF ISSUE:

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Mr. D. J. LeBlanc held a regular assignment as Checker, Halifax  
Wharf. On December 5, in filling an unassigned position of Checker,  
the Company called and employed an unassigned employee in preference  
to Mr. LeBlanc.

The Brotherhood has progressed a claim on behalf of Mr. LeBlanc, for  
ten hours' pay at one and one-half times the hourly rate,  
representing the time worked by the unassigned employee on the shift  
in question. The Brotherhood contends that the Company's failure to  
employ Mr. LeBlanc for the unassigned position, is a violation of  
Article 3.8 of Agreement 5.62.

The Company has declined the claim on the basis that Article 3.8  
applies to unassigned employees, and does not contemplate the use of  
assigned employees to fill unassigned positions.

FOR THE EMPLOYEE:

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(SGD.) J. A. PELLETIER  
NATIONAL VICE-PRESIDENT

FOR THE COMPANY:

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(SGD.) S. T. COOKE  
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, N.B.

And on behalf of the Brotherhood:

J. A. Pelletier - National Vice President, C.B.R.T., Montreal

AWARD OF THE ARBITRATOR

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Article 3.8 of the collective agreement is as follows:

"3.8 In filling unassigned positions, employees will be

required to report to a central calling point designated by the Company and shall be called in seniority order starting from the top of the list."

The grievor had a regular assignment, and had, it seems, worked his regular 40 hours during the week in question. His claim is that he was entitled to an unassigned position on December 5. This position was given to an unassigned junior employee. It is said that the grievor was not available at the hiring hall, so that his claim could not succeed in any event, but it appears that there are similar grievances by employees who were available, and I am asked to decide this case on the general principle involved, that is, on the interpretation of Article 3.8.

The grievor is certainly an employee, and the fact is that he was not called in seniority order for the unassigned position in question. It is the Union's contention that that is sufficient to entitle the grievor to succeed in this grievance. It is the Company's position, however, that Article 3.8, read in its proper context, sets out what is to be done with respect to unassigned employees, and does not give assigned employees, who have already had the benefit of their regular jobs, the right to exercise seniority over unassigned employees, for unassigned positions.

The Company relies on the structure of Article 3 as a whole. Articles 3.1 to 3.7 deal with assigned positions and with how they are to be filled. Article 3.8 then deals with unassigned positions, and its thrust really seems to be that those seeking unassigned positions be called (at the central calling point) in order of seniority. A very literal reading of Article 3.8 would permit the conclusion that any employee may take advantage of that procedure, and of the exercise of seniority rights which is provided for. In my view, however, the employees contemplated by Article 3.8 are those who have not obtained assigned positions pursuant to the preceding articles. This reading of the article is, I think, confirmed by Article 3.9 (which is surely to be read together with Article 3.8) which sets out what is to be done for the "senior unassigned employee" who "should have been called" for such a position, but was not. In that provision, it is made clear that it is unassigned employees with which Articles 3.8 and 3.9 are concerned.

For these reasons, the grievance must be dismissed.

J. F. W. WEATHERILL  
ARBITRATOR