

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 741

Heard at Montreal, Tuesday, March 11, 1980

Concerning

ONTARIO NORTHLAND RAILWAY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL
WORKERS

DISPUTE:

Lay off of Motorman P. McConnell and T. Feroli at Kirkland Lake,
Ontario.

JOINT STATEMENT OF ISSUE:

On August 21, 1979, respectively, Mr. P. McConnell and Mr. T. Ferolie were each given five days' notice of lay off in accordance with Article 7.1 of the Collective Agreement. Both of the employees grieved that their lay off was contrary to the Arbitrator's award in Case No. 713. In his supplementary award of September 11, 1979 the Arbitrator, in dealing with this question, stated "This is not a question relating to the implementation of the award, but simply involves the propriety of the employees' lay off in the circumstances which existed at that later time".

The union subsequently appealed at the successive steps of the grievance procedure that the lay offs were the result of an operational change and the company should have issued an Article VIII Notice. The company took the position throughout that the time limits for making such a claim had expired.

FOR THE EMPLOYEES:

(SGD.) J. D. HUNTER
NATIONAL VICE PRESIDENT

FOR THE COMPANY:

(SGD.) R. O. BEATTY
GENERAL MANAGER

There appeared on behalf of the Company:

A. Rotondo - Manager, Labour Relations, O.N.R., North Bay,
Ont.
D. V.Allen - Director Personnel & Labour Rel's, ONR, North
Bay, Ont.

And on behalf of the Brotherhood:

T. N. Stol - Representative, C.B.R.T., Don Mills Ont.

AWARD OF THE ARBITRATOR

On July 19, 1979 the Company advised the Union that, effective immediately, "...the City traffic at Kirkland Lake will be separated completely with both groups handling their own". The reference to "both groups" was to the Company's own employees and to those of Star Transport Ltd., a related Company but whose employees are in a different bargaining unit. The situation with respect to the two groups is described in Case No. 713 and in the Supplementary Award.

It was as a result of a decision made by Star Transfer Ltd. that there was to be less work available for employees in the bargaining unit, at least as far as the work done by the grievors was concerned. If (without deciding the point) there was in fact an organizational change put into effect by Ontario Northland Railway, then the letter of July 19 constituted notice of such change. It would then have been open to the parties to enter into the procedures contemplated by the job security agreement. The Union did not seek to follow those procedures, and did not file any grievance with respect to the notice. Insofar as the present grievance raises a question as to the change in operations, it has been filed beyond the time limit set in the collective agreement, and I have no jurisdiction to hear it.

The layoff of the grievors is not alleged to have been a violation of their seniority rights. It was simply a result of the reduction in the work available for them, as a result of the events described. The grievors were reinstated in accordance with the Award in Case No. 713, and as is said in the Supplementary Award, their subsequent history is a separate matter.

For the foregoing reasons, the grievances must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR