

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.790

Heard at Montreal, Tuesday, November 11,1980

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT
HANDLERS,
EXPRESS AND STATION EMPLOYEES

DISPUTE:

Claim of Relief Train Dispatcher N. Pugh for 8 hours pro rata pay for Monday June 25, 1979 due to not being called in accordance with Article 20.4.

JOINT STATEMENT OF ISSUE:

On June 20 a message was issued advising Mr. Pugh that his relief assignment was to be completed on Friday June 22. The message listed the 3 assignments on which junior Relief Train Dispatchers were working and asking that he make his choice in accordance with Article 6.38 (ii). Mr. Pugh chose an assignment that had its days off consecutive with the rest days of his previous assignment. Consequently he was not permitted to work on the rest days of the assignment he claimed resulting in Mr. Pugh enjoying 4 consecutive days.

The Brotherhood claimed that the listing of the assignment on which Mr. Pugh displaced was in violation of Article 20.4 as the position was not scheduled to work on the day the employee was available to work and submitted a claim on behalf of Mr. Pugh.

The Company has declined the claim.

FOR THE EMPLOYEE:

FOR THE COMPANY:

(SGD.) G. E. HLADY
SYSTEM GENERAL CHAIRMAN

(SGD.) S. T. COOKE
VICE PRESIDENT - LABOUR REL'S

There appeared on behalf of the Company:

J. A. Fellows	-	System Labour Relations Officer, CNR, Montreal
W. A. McLeish	-	Labour Relations Assistant, CNR, Toronto
R. A. Groome	-	" " " " Montreal
W. J. Behun	-	Chief Train Dispatcher, MacMillan Yard, CNR, Toronto
W. J. Rupert	-	Rules Manager, CNR, Montreal

And on behalf of the Brotherhood:

G. E. Hlady	-	System General Chairman, BRAC, Barrie, Ont.
B. E. Woods	-	District Chairman, BRAC, Barrie, Ont.
F. E. Soucy	-	General Chairman, Gen. Secy. Treas., BRAC, Montreal
N. Pugh	-	(Grievor) - Toronto

AWARD OF THE ARBITRATOR

At the material times the grievor had been working as a relief train dispatcher on a temporary vacancy on "YD-3" desk. His rest days on that assignment were Saturday and Sunday. On Wednesday, June 20, the grievor was advised that he was to be displaced by the regular dispatcher, effective Monday, June 25. No issue arises as to that. It was then open to the grievor to exercise his seniority to move to some other position. In such circumstances, an employee's rights are those provided by Article 6.38 (ii) of the collective agreement, which is as follows:

"A Relief Dispatcher when released from temporary or relief work as a Train Dispatcher will exercise his seniority in the following manner:"

"If released on completion of work week, he must, after protecting the rest days, displace a junior relief Train Dispatcher working in the same office; there being none he will after completing the rest days, return to his regular assignment."

Under this article the grievor was required to protect the rest days which occurred on the completion of the work week. That he did. It was then open to him to displace a junior relief dispatcher.

The grievor was given a list of positions available to him, that is, a list of positions held by junior relief dispatchers. This list, perhaps unfortunately, did not describe the assignments in any detail or mention the rest days. From the list, the grievor selected the "Swing #2" position, said by the Union to be a superior position. The grievor does not appear to have made any enquiry as to the position or the rest days involved. He made a choice, based on whatever criteria may have seemed to him to be appropriate. The Union argued that the list of positions given the grievor was improper, because "It cannot be stated that a position is available unless such position works on that date". Such a view would drastically limit an employee in his choice of positions. If that view were accepted, then in this case, there would have been only one position "available" to the grievor, namely position YB3, whose rest days happened to be Saturday and Sunday. If there had not happened to be a position with those rest days held by a junior employee, then - if the Union's argument were correct - the grievor would have been entirely out of luck, even though there might be junior employees holding positions with other rest days.

In my view, that argument is quite unsound. Article 6.38 (ii) allows a dispatcher released from temporary work to "displace a junior relief Train Dispatcher working in the same office". Pursuant to that provision an employee in the grievor's position is quite

properly given a list of such junior employees. He may then displace one of them, and may make his choice, apparently, as he sees fit. It might be, for example, that someone else in the grievor's position would be quite pleased to have four consecutive rest days: the Union's position would deprive him of that choice.

In fact, it was the Company which pointed out to the grievor the consequences of his choice. When he understood that, the grievor then sought to choose a different position, and this was allowed, although it was then too late for him to be allowed to displace on a position working on the Monday.

In any event, the grievor suffered no loss of regular wages. Article 20.4 protects employees from losses which may occur as a result of moving from one assignment to another. The calculation is to be made on the basis of two pay periods, and for the 20-day period in question, it appears that the grievor received 21 days' pay.

There has been no violation of the collective agreement, and the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR