

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 794

Heard at Montreal, Tuesday, December 9, 1980

Concerning

ONTARIO NORTHLAND RAILWAY

and

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

DISPUTE:

Claim for expense allowances - operator J.O. Cashmore.

JOINT STATEMENT OF ISSUE:

Operator J. O. Cashmore held a temporarily established position as Operator in Timmins for approximately one year. When the position was advertised permanently, Mr. Cashmore chose not to remain in Timmins and the additional position was taken up by a junior employee. Mr. Cashmore was subsequently the successful applicant for a position of Operator at Matheson, some 40 miles away. During the bulletining process, Mr. Cashmore performed spare work in the Timmins Office before taking up his new position in Matheson. He entered a claim under Article 18.1 of the Collective Agreement for expense allowances for each day of such spare work. The company denied the claim.

FOR THE EMPLOYEE:

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

FOR THE COMPANY:

(SGD.) R. O. BEATTY
GENERAL MANAGER

There appeared on behalf of the Company:

A. Rotondo - Manager, Labour Relations, ONR, North Bay,
Ont.
W.R. Deacon - Trainmaster & Asst. Rule Instructor, ONR,
Englehart, Ont

And on behalf of the Brotherhood:

G. E. Hlady System General Chairman, BRAC, Barrie, Ont.

AWARD OF THE ARBITRATOR

Article 18.1 of the collective agreement is as follows:

"18.1 Spare Telegraphers will receive \$18.00 per day expenses while working away from their headquarters. This Article will not apply when meals and lodging are furnished or paid for by the company."

The questions which arise with respect to the application of this article in the instant case are: 1) was the grievor a "Spare Telegrapher at the material times? and 2), was he then "working away from his headquarters"?

Mr. Cashmore had, as the joint statement of issue makes clear, held a temporarily established position as Operator in Timmins. The particular position was filled by a senior employee who exercised his right pursuant to Article 3.7 of the collective agreement. Subsequently, and again pursuant to provisions of the collective agreement, the position was bulletined, and the senior employee in question appointed thereto. The position thus vacated by the senior employee (in which the grievor actually worked) was then bulletined and another employee senior to the grievor was appointed thereto. That left yet another position of Operator vacant. The grievor did not bid on it, and a junior employee was appointed. About a month after the last of these appointments, the grievor was appointed to a position of Operator at Matheson, a position on which he had bid.

The grievor claims entitlement to the benefit of Article 18.1 in respect of time worked at Timmins from April 3, 1980, being the day following the day on which a senior employee was appointed to the position the grievor had (officially) held on a temporary basis.

The position which the grievor held at the outset of the events described was an "established position" within the meaning of Article 3.1 of the collective agreement. It was at first a "temporary" position and later - as required by the collective agreement - was bulletined as a "permanent" one. The position was taken up by the successful bidder on April 4, 1980, but the grievor - by reason of the application of Article 3.7 - had in fact worked in other Operator positions at Timmins (apart from his vacation and a period on weekly indemnity), until the time he took up his position at Matheson. The grievor was, at all material times, a "temporarily established Telegrapher". When he was displaced, he had a right pursuant to Article 4.2, either to exercise his seniority or to "work spare". The grievor did work in several positions as Operator at Timmins before taking up his appointment at Matheson. In my view, however, it would be wrong to say that he was then a spare telegrapher working away from his headquarters, within the meaning of Article 18.1. He was, rather, an established telegrapher (and one may be "established" by virtue of a temporary as well as a permanent appointment) and, as such, was entitled to any spare work in the office in question, pursuant to Article 4.9. He was not subject to the sort of spare assignments away from his headquarters to which Article 18.1 is addressed. As an established telegrapher with an entitlement to work at Timmins, the grievor simply did not come within the contemplation of Article 18.1. Accordingly, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR