CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 826

Heard at Montreal, Tuesday, April 14, 1981

Concerning

CN MARINE INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood claims that the Company violated Article 4.1 of Agreement 5.26 in not employing a Purser on the M.V. "Ambrose Shea" while in layup between September lst and 14, 1980.

JOINT STATEMENT OF ISSUE:

The Brotherhood submitted a claim on behalf of Mr. David Billard, for payment of wages he would have received had he been called upon to perform the work done on the M.V. "Ambrose Shea" between September lst and 14, 1980, of a nature normally performed by a Purser. The Company declined payment of the claim stating that there was not sufficient work required to necessitate the employment of a Purser during this period.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) W.C. VANCE REGIONAL VICE-PRESIDENT	(SGD.) G.J. JAMES DIRECTOR INDUSTRIAL RELATIONS

There appeared on behalf of the Company:

N.B. Price	-- Manager, Labour Relations, CN Marine Inc., Moncton
W.J. Nearing	-- Senior Labour Relations Assistant, CN Marine, Inc., Moncton
Captain J. Prim	-- Master, M.V. "Ambrose Shea", CN Marine Inc., St. John's, Nfld.

And on behalf of the Brotherhood:

W.C. Vance	-- Regional Vice-President, CBRT&GW, Moncton
H. Reddick	-- Local Chairman, CBRT&GW, St. John's, Nfld.

AWARD OF THE ARBITRATOR

Article 4.1 of the Collective Agreement is as follows:

> "4.1 Applicable to Agreements 5.25, 5.26 and 5.49 only:
>
> Vacancies or new positions, which are expected to be of 60 calendar days' duration or less, and vacancies of longer duration pending filling by bulletin appointee, shall be filled, as required, in the following order:
>
> (a) by the senior qualified employee working in the seniority group who makes application therefore within 5 calendar days of its occurrence;
>
> (b) by the senior qualified employee protecting spare and relief within the seniority group who is immediately available;
>
> (c) by the junior qualified laid-off employee within the seniority group;
>
> (d) by the qualified person standing first on the preferential list who is immediately available;
>
> (e) by other qualified applicants from within Newfoundland Vessel Agreements according to the order which would apply on the preferential list.
>
> (f) by other qualified applicants from other CN Marine Vessel Agreements in order of best seniority date in such Agreements."

It is the Union's contention, in effect, that there was a vacancy in the position of Purser at the material times.

For the period in question, the vessel was in layup status. The crew was reduced from the normal operating crew of 84 (including a Purser and probably an Assistant Purser) to a crew of 8, with no Purser. Whether or not a Purser had been included in layup crews in the past, none was included on this occasion, and the question is whether or not the Company was obliged to have one, if any Purser duties were performed.

Of course, the vast majority of a Purser's duties (which involve dealing with the public, arrangements involving disposition of facilities of a vessel in service and administration duties relating to a large crew), did not need to be performed during the layup. It is nevertheless the case that certain Purser duties were performed. In this case, they were performed by the Master. These duties included, most importantly, the preparation of time reports as well as the reporting of crew lists and perhaps some other minor administrative matters. Such work, in connection with a crew of 8, took but a small portion of the Master's time.

It does not appear that there was anything improper in the Master's

performing these duties to the extent that he did. I was not referred to any provision of the Collective Agreement which would prevent the performance of "bargaining unit work" by someone not a member of the bargaining unit. There being no violation of any express provision of the Collective Agreement, the only question which might be thought to arise would be whether or not the Master in fact performed Purser duties to the extent that he in fact became a Purser and so ought to be considered a member of the bargaining unit. See, in this connection, the Fittings Ltd. case, 20 L.A.C. 245. In such a case it would have to be said that there had been a vacancy. In the instant case, however, such a conclusion is not possible on the facts. The Master did a slight amount of Purser's work, but not to the extent that his whole job, for the period in question, could properly be characterized as that of Purser.

The Company made arrangements for the performance of a small amount of the work which a Purser would normally do, by someone else. Those arrangements were not contrary to the Collective Agreement. It did not require Purser's work to be performed to the extent that there was "a job of work to be done" in that classification. There was, therefore, no vacancy, so Article 4.1 of the Collective Agreement did not need to be applied.

For the foregoing reasons, the grievance is dismissed.

J.F.W. Weatherill,
Arbitrator.