CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 990
Heard at Montreal, Wednesday, October 13th, 1982

Concerning

CN MARINE INC.

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Mr. Wayne Cameron, Engineroom Assistant, employed on the "M.V. John Hamilton Gray" in the P.E.I. Ferry Service was not permitted to displace a junior employee working on a temporary vacancy on a vessel operating in the service on two occasions, October 16, 1981 and October 31, 1981 while the "M.V. John Hamilton Gray" was in refit.

JOINT STATEMENT OF ISSUE:

The Brotherhood claims compensation for Mr. Cameron for any and all earnings lost, and any expenses incurred as a result of his not being permitted to assume a position on a vessel operating in regular service while the "M.V. John Hamilton Gray" was in refit in St. John's, Nfld. The Brotherhood claims violation of Article 4.19 of Agreement 5.61. The Company has denied the claims.

FOR THE BROTHERHOOD:	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, Moncton, N.B.
Capt. D.G. Graham	- Marine Superintendent, CN Marine, Borden, P.E.I.

And on behalf of the Brotherhood:

Barrie Hould	- Representative, CBRT&GW, Moncton, N.B.
G. Sexton	- Local Chairman, Local 127, CBRT&GW, Borden, P.E.I.

AWARD OF THE ARBITRATOR

The grievor was an Engineroom Assistant, assigned to the M.V. John Hamilton Gray. On September 15, 1981, that vessel went for a refit. The grievor was then part of its crew. Prior to the vessel going to drydock the grievor and other employees had been given the opportunity to express preference for assignments on vessels

operating in regular service. The grievor had expressed such a preference, but it appears that his seniority was not such as to entitle him to an assignment on such a vessel at that time. He therefore went with the M.V. John Hamilton Gray when it went for refit.

Article 4.19 of the Collective Agreement is as follows:

> "Notwithstanding anything contained in this Article, it is understood that when a vessel goes to drydock the senior employees will, as far as practicable, be given preference in filling positions in their respective seniority groups on the vessels operating in regular service and will be permitted to resume their regular assignments on return of.the vessel from drydock. Employees desiring to transfer under this rule to vessels operating in regular service must advise the Marine Superintendent accordingly, in writing, at least 7 days prior to the vessel's scheduled departure date for drydock."

While that Article is to take effect where there is "a refit situation", as there was here, it does not mean that the other provisions of Article 4 (which deals generally with bulletining and filling of positions) are ineffective throughout the period of the refit. Rather it gives a special right to employees on a vessel going to refit to exercise seniority. This right must be exercised prior to the scheduled departure for drydock, as the last sentence of the Article plainly contemplates. The grievor sought to exercise that right at the appropriate time, but his seniority was not such as to entitle him to be transferred.

Later, while the M. V. John Hamilton Gray was undergoing refit, the grievor was able to take up a temporary vacancy which arose on a vessel in regular service. By Article 4.16, upon completion of that temporary assignment, the grievor reverted to his former position or status It would appear that the grievor did not return to the John Hamilton Gray at that time, and that he was disciplined on that account. Later, he was able to take up another temporary vacancy which had arisen. Again, at the conclusion of that assignment, he did not return to his vessel, and was disciplined. While the discipline was grieved in each case, the grievances were not processed beyond the first stage. Those matters are not before me for determination. The grievor rejoined his vessel when it reentered regular service on November 16, 1981.

In this grievance, the grievor protests the Company's refusal to permit him to displace junior employees who were working on temporary assignments on vessels in regular :service, while he was assigned to the M.V. John Hamilton Gray during its refit. It is to be noted that where temporary assignments of that sort arose during the period in question, the grievor was able to obtain them. That is not the same thing as his displacing a junior employee already working on a temporary assignment, which is what the grievor seeks to do here.

Article 4.2 of the Collective Agreement is as follows:-

> "Employees filling vacancies or positions under Article 4.1 shall not be subject to displacement except by an employee who would otherwise be unable to hold work in an equal or higher-rated classification within the group."

On the occasions in question, the junior employees filling temporary vacancies were filling vacancies under Article 4.1. They were not subject to displacement by the grievor who, though senior, was not "unable to hold work". While Article 4.19 applies "notwithstanding anything in this article", its effect is to give employees on vessels bound for refit a preference, "as far as practicable" in filling positions on vessels in regular service, such preference to be exercised prior to the departure for refit. It does not give employees on vessels undergoing refit a right to displace junior employees at will throughout the refit period. What appears to be contemplated is a right of displacement exercisab1e at the start of the refit period.

There was, in my view, no violation of the Collective Agreement in the circumstances, and the grievance must be dismissed.

J. F. W. WEATHERILL,
ARBITRATOR