

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1099

Heard at Montreal, Tuesday, June 14, 1983

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

(CN Rail Division)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim of Messrs. Boudreau, Estabrooks and Scott when not recalled from lay-off to perform snow removal work.

JOINT STATEMENT OF ISSUE:

Welding employees were utilized on April 8 and 9, 1982 to perform snow removal work at Moncton, N.B. The Brotherhood contends that the Company violated Article 32.3 and 15.9 of Agreement 10.1 when they did not recall Messrs. Boudreau, Estabrooks and Scott.

The Company disagrees with the Brotherhood's contention.

FOR THE BROTHERHOOD:

(SGD.) PAUL A. LEGROS
System Federation General Chairman

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
Assistant Vice-President
Labour Relations

There appeared on behalf of the Company:

K. J. Knox	- Manager Labour Relations, CNR, Montreal
P. E. Scheerle	- System Labour Relations Officer, CNR, Montreal
W. D. Agnew	- Labour Relations Officer, CNR, Moncton

And on behalf of the Brotherhood:

Paul A. Legros	- System Federation General Chairman, BMW, Ottawa
J. Roach	- General Chairman, BMW, Moncton
F. L. Stoppler	- Vice-President, BMW, Ottawa

AWARD OF THE ARBITRATOR

The grievors were on layoff at the material times. Work of a sort they were qualified to do was performed by Welders (who were paid their proper rate : they were not paid as trackmen; had that been so, the decision might well be different). This was said to be contrary to Articles 15.9 and 32.3 of the Collective Agreement. Those

Articles are as follows:

"15.9 Temporary positions or temporary vacancies of under forty-five days' duration shall be filled by qualified laid-off employees living at or near the work location, provided they are immediately available. Laid-off employees shall not be required to accept recall to vacancies of less than forty-five days when they have steady employment elsewhere."

"Performance of Maintenance of Way Work
by Employees Outside of Department

32.3 Except in cases of emergency or temporary urgency, employees outside of the maintenance of way service shall not be assigned to do work which properly belongs to the maintenance of way department, nor will maintenance of way employees be required to do any work except such as pertains to his division or department of maintenance of way service."

As to Article 15.9, the assignment of this work did not create a temporary position or temporary vacancy. There was no specific need for Trackmen to do this work. In any event, one of the grievors, Mr. Estabrooks, would not appear to have met the requirements of the section, not living sufficiently near the work site.

As to Article 32.3, this was, if not an emergency, a situation of "temporary urgency". It was for that reason that the Company took Welders from their regular jobs and set them to snow removal. There had been a heavy snowfall, and the Company had to get it cleared away so as to be able to carry on with regular work.

There was, I find, no violation of the Collective Agreement in the circumstances, and the grievances must accordingly be dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.