

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1589

Heard at Montreal, Tuesday, December 9, 1986

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Application of paragraph 58.28 of Article 58 of Agreement 1.1.

JOINT STATEMENT OF ISSUE:

Paragraph 58.28 of Article 58 of Agreement 1.1 reads:

"When a Locomotive Engineer commences pre-retirement vacation, the vacancy resulting therefrom shall be regarded as a permanent vacancy and advertised as such under the applicable provisions of this article."

On June 26, 1986, the Company wrote General Chairman P. M. Mandziak in respect to the application of the aforesaid article. The letter stated that the provisions of paragraph 58.28 were being incorrectly applied on Seniority Districts 3, 4 and 6, in that the successful applicant to a vacancy created by the retirement of a locomotive engineer was not being awarded the position on the first day of such vacancy, but rather such vacancy was being filled for the first seven days thereof by locomotive engineers assigned to the spare board. The letter further stated that it was the Company's intention to cease this erroneous application as of October 31, 1986.

On July 4, 1986, General Chairman Mandziak replied, stating that he disagreed with the Company's position. It was his position that the practice which the Company viewed as erroneous was, in fact, the proper application of the article in question, having been so applied since 1978 when paragraph 58.28 was incorporated into Agreement 1.1.

FOR THE BROTHERHOOD:

(SGD.) P. M. MANDZIAK  
General Chairman

FOR THE COMPANY:

(SGD.) M. DELGRECO  
FOR: Assistant  
Vice-President  
Labour Relations.

There appeared on behalf of the Company:

D. W. Coughlin	- Manager Labour Relations, CNR, Montreal
J. B. Bart	- System Labour Relations Officer, CNR, Montreal
C. St. Cyr	- System Labour Relations Officer, CNR, Montreal
M. C. Darby	- Coordinator Transportation, CNR, Montreal

M. Joannette - Project Officer, CNR, Mintreal

And on behalf of the Brotherhood:

P. M. Mandziak - General Chairman, BLE, St. Thomas

#### AWARD OF THE ARBITRATOR

The language of Article 58.28 of the Collective Agreement plainly contemplates that a vacancy resulting from a pre-retirement vacation is to be treated as a permanent vacancy for the purposes of job posting. This Article originated in a Memorandum of Agreement in 1978, prior to which various practices applied, including treating such a vacancy as temporary. From the inception of Article 58.28, in Seniority Districts 1 and 2, being that portion of Canada east of Montreal, with the exception of Newfoundland, the provision was interpreted and applied in a way that entitled the successful applicant to assume the permanent position on the first day of the vacancy. In Districts 3, 4 and 6, generally described as the City of Montreal and the Province of Ontario as far west as Thunder Bay the same practice obtained between 1978 and 1980. It appears that during the course of a meeting convened to resolve another unrelated matter, on March 20, 1980, upon the request of the Union, Company Officers present verbally agreed that pre-retirement vacancies under Article 58.28 would, for the first seven calendar days, be treated as temporary vacancies to be manned from the spareboard.

The material does not establish, however, that the position expressed by the Company Officer was in consideration of the settlement of any matter in dispute, or that it induced any injurious reliance on the part of the Union. In other words, it was not suggested that the conditions of an estoppel are established. Rather, the Union rests this grievance on the basis that the language of Article 58.28 supports its interpretation, namely that for the first seven days a vacancy created by a pre-retirement vacation is to be filled from the spareboard. The Arbitrator can see nothing in the language or context of the Article to support that result. The Union's Representative relies, in part, on Article 58.3 which provides:

"58.3 Permanent vacancies or permanent new assignments to be advertised to the Seniority District will be bulletined weekly at all terminals and stations subsidiary thereto, and the senior applicant having the necessary qualifications will be assigned."

The reference in the foregoing provision to the vacancy in question being "bulletined weekly" does not, in the Arbitrator's view, sustain the suggestion of the Union's Representative that the parties contemplated that in all cases there must be a temporary assignment for a period of seven days. On its face the word "weekly" appears to refer to the timing of the bulletins, and not specifically to the duration of a temporary assignment. On the whole, having regard to the language of Article 58.28, read in conjunction with Article 58.3, the Arbitrator is compelled to sustain the interpretation advanced by the Company. That interpretation is, moreover, more consistent with

the apparent intention of Article 58.28 to treat pre-retirement vacancies as permanent. For these reasons the grievance must be dismissed.

MICHEL G. PICHER,  
ARBITRATOR.