CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2405
Heard at Montreal, Wednesday, 13 October 1993
concerning
CANADIAN NATIONAL RAILWAY COMPANY
and
CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS
DISPUTE:
Claim on behalf of spare and relief and/or laid-off employees for loss of wages for work performed by eight (8) employees on Employment Security status on December 7 and 8, 1988 at Gordon Yard in Moncton.
JOINT STATEMENT OF ISSUE:
On December 7 and 8, 1988, the Company utilized eight (8) employees on Employment Security status to carry out a "make-work" project consisting of picking up brake shoes at Gordon yard in Moncton.
The Brotherhood contends that the work should have first been offered to spare end relief and/or laid-off employees represented by the Brotherhood and that in failing to do so, the Company violated Articles 12.6 and 12.7 of the collective agreement.
The Company disagrees with the Brotherhood's contention.
FOR THE BROTHERHOOD: FOR THE COMPANY:
(SGD.) T. N. STOL (SGD.) M. M. BOYLE
NATIONAL VICE-PRESIDENT for: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS
There appeared on behalf of the Company:
J. Bart - Manager, Labour Relations, Montreal
R. Paquette - Manager, Labour Relations, Montreal
M. M. Boyle - Director, Labour Relations, Montreal
O. Lavoie - System Labour Relations Officer, Montreal
J. Watt - System Labour Relations Officer, Montreal
And on behalf of the Brotherhood:
T. Barron - Representative
G. T. Murray - Regional Vice-President, Moncton

AWARD OF THE ARBITRATOR

Upon a close review of the material filed, and the submissions made at the hearing, the Arbitrator must agree with the Company's representative that the facts and issues in the dispute at hand are indistinguishable from those dealt with by this Office in CROA 2006, with the exception of the time that the work was performed and the identity of the employees involved. I can see no reason to depart from the conclusion in that award in the case at hand.

It would appear that the case must also fail on an alternative basis. The Brotherhood alleges violation of articles 12.6 and 12.7 of the collective agreement, which provide as follows:

12.6 Temporary vacancies, newly-created positions and seasonal positions, when known to be for 90 calendar days' duration or less, will not be bulletined. However, suitable advice notice will be posted, as required, at the terminal affected. Such position shall be awarded to the qualified senior employee on the Region who makes application therefor within five calendar days from the date notice is posted. The successful applicant shall be permitted to assume the temporary vacancy with ten (10) days from the date the advice notice is posted.

Applications from regularly assigned employees will only be accepted when it is known the vacancy is for more than ten working days or when it involves an increase in rate of pay, or a change in shift, or rest day or days. When other qualified employees are available regularly assigned employees will not be allowed to commence work on a temporary vacancy and their regular assignment on the same day.

12.7 Temporary vacancies of ten working days or less, and vacancies in other positions pending occupancy by the successful applicant may be filled by a qualified senior employee at the terminal affected, who desires the position, without the necessity of advice notice or bulletining. An employee filling a temporary vacancy pending occupancy by the successful applicant will not be subject to displacement during the first 30 days of occupancy. When it is known that a temporary vacancy will occur, employees desiring the position may be required, as locally arranged, to make their intentions known some time prior to the starting time of the vacancy. The employee, so assigned, will not be subject to displacement during such period, except by a senior qualified employee unable to hold work at the terminal affected.

The term "temporary vacancy" is defined in article 1.4 of the collective agreement as follows:

1.4 A vacancy in a position caused by the regularly assigned occupant being absent from duty (including on vacation but excluding preretirement vacation) or temporarily assigned to other duties.

The undisputed facts establish that the brake shoe clean-up assignment at Gordon Yard in Moncton was a temporary "make work" project, and did not involve the kind of relief assignment caused by the absence or temporary reassignment of a regularly assigned employee. In light of the terms of the collective agreement, the Arbitrator can give little or no weight to the opinion expressed by a Company officer, apparently a year after the filing of the instant grievance, to the effect that article 12.7 should have application in make work situations. Clearly, at the time of the assignment which is the subject of this grievance, no such understanding could be found, based on the plain terms of the collective agreement. I must therefore find that no violation of articles 12.6 and 12.7 of the collective agreement is established.

For the foregoing reasons the grievance must be dismissed.

October 15, 1993 (sgd.) MICHEL G. PICHER
ARBITRATOR