

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 15

Heard at Montreal, Monday, November 15th, 1965

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

DISPUTE:

This dispute concerns claim of Operator J.A. Regehr for the right to occupy the dwelling at Wetaskiwin, Alberta, under the provisions of Clauses 1 and 4 of article 13 of the collective agreement.

JOINT STATEMENT OF ISSUE:

On August 5th, 1964, the agency dwelling at Wetaskiwin became vacant. The position had been advertised, with dwelling, but the successful applicant for the position elected to reside elsewhere. The two senior operators at that location were asked if they were interested in occupying the dwelling and both indicated they were not. Operator J.A. Regehr had requested that he be permitted to occupy the dwelling and he was advised he could do so at a rental of \$40.00 per month; this was later reduced to \$30.00 per month.

Operator Regehr contended the Company was obligated to provide the dwelling to him at a rental of \$5.00 per month, and that, in addition, while occupying the dwelling, he be allowed free fuel and light. In support of this contention the following rules of the collective agreement were quoted:

ARTICLE 13, CLAUSE (1)

At stations where dwelling, fuel and light are provided, the dwelling as far as practicable will be reserved exclusively for the use of the Agent and his family, unless he elects to reside elsewhere, in which event the senior permanently established Operator having a family shall have the first refusal. If no assigned Agent at any station with dwelling, the senior permanently established Operator with a family shall have the exclusive use of the station dwelling, except that a junior Telegrapher occupying a dwelling may retain it in preference to a senior Telegrapher later appointed.

ARTICLE 13, CLAUSE (4)

A rental deduction of \$5.00 per month will be made from all Telegraphers occupying Company's dwellings unless, in the opinion of the Superintendent, such amount should be reduced.

The Company declined the claim of Operator Regehr on the grounds there is no requirement under the collective agreement that he be supplied with dwelling accommodation at Wetaskiwin.

FOR THE EMPLOYEES:

(SGD.) R. B. COPELAND
SYSTEM GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) A. M. FRASER
GENERAL MANAGER

There appeared on behalf of the Company:

- J. C. Anderson – Assistant Manager Labour Relations, Montreal.
- J. G. Benedetti – Supervisor of Personnel & Labour Relations, Vancouver.

And on behalf of the Brotherhood:

- R. B. Copeland – System General Chairman, Winnipeg.
- R. A. Perrault – General Chairman Eastern Lines, Montreal.

AWARD OF THE ARBITRATOR

As indicated in the Joint Statement of Issue, the Company advertised an opening for an agency at Wetaskiwin, Alberta, on May 19, 1964. The advertisement told that a dwelling would be provided the successful applicant.

The opportunity to live in this Company dwelling at a monthly cost of \$5.00 was declined by the new agent. In order of seniority, the Company then canvassed two telegraph operators. They also declined. The grievor was not given a similar opportunity. He was below the other two in seniority. However, he made a written application to be supplied this accommodation. He was told he could live in the dwelling, but the cost to him would be \$40.00 per month. At that time he was advised that under the terms of the collective agreement the Company was under no obligation to provide such accommodation to him.

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For the grievor Mr. Copeland described the failure of the Company to grant this privilege to Operator Regehr was a clear violation of Section 4.

For the Company Mr. Benedetti urged the provision in question carried with it no obligation upon the Company to supply accommodation for those mentioned therein. The word used, namely, "provide" indicated the prerogative to supply accommodation in the manner described was vested in the Company alone. The only provision in this article requiring accommodation to be supplied was that contained in Section 3, reading:

Telegraphers living at outlying points where no living accommodation can be secured will be provided with suitable living quarters which shall be for their exclusive use.

This control by management was further indicated, Mr. Benedetti suggested, in Section 5 of this article, providing that the Company has the right to require an occupant to vacate such living quarters.

A study of Section 1 of this article establishes substance for Mr. Benedetti's reasoning, that what follows in the article is only to apply when the Company has offered to provide such quarters. The distinction can be seen readily by comparison with the language used in Section 3, which indicates a negotiated right of a telegrapher operator to such accommodation in the areas mentioned.

In this matter, however, I am convinced the Company indicated in its advertisement an intention to provide accommodation to those mentioned in the article. The question remaining is whether the grievor is one of those so described.

To be able to live in quarters, apparently suitable for such a purpose, at a cost of \$5.00 per month represents a monetary benefit over and above income from salary. Did the Company intend granting such a privilege to employees other than those specifically described in Clause 1? The only employees therein mentioned are, first, the agent, and next, "the senior permanently established operator ..." There is nothing in the provision referring to those operators lower in the seniority scale.

As stated, in this instance the accommodation was offered the "senior permanently established operator" and he declined. The Company's offer in article 13 mentions no others.

Although not required by contractual obligation, and acting under its prerogative to give or not to give over and above the contents of the agreement, it would, of course, be open to the Company to offer it, as in this instance, to the next lowest in seniority. When the second operator declined, the Company decided to go no lower in the seniority scale.

To grant this claim, it is apparent that article 13 would have to be changed to include those lower in the seniority scale in the case of a refusal on the part of those described. In other words, once the Company has indicated by an advertisement the intention to provide living accommodation to an agent, and both the successful applicant and the “senior permanently established operator” have declined, the offer would be extended to those lower in the seniority scale. That, of course, does not appear. The possibility of accommodation at \$5.00 per month is limited to the two employees specified by the language used.

For these reasons this claim must be denied.

(signed) J. A. HANRAHAN
ARBITRATOR