

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 22

Heard at Montreal, Monday, January 10th, 1966

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

DISPUTE:

The Union claims that the Company violated article 24 (a) of the agreement when it required Mr. A. Deschenes, Agent/Operator at Ste. Anne Church, Quebec, to vacate a dwelling which had been provided by the Company.

JOINT STATEMENT OF ISSUE:

The Company owned for many years a building and property known as Ste. Anne Church at the Shrine of Ste. Anne de Beaupré, Quebec. The lower floor of the building contained station facilities, i.e., ticket office, waiting room, etc., and the upper floor provided an eight-room apartment which was assigned as living quarters for the incumbent of the Agent's position at that location. On October 10, 1963 the position of Agent/Operator at Ste. Anne Church was bulletined at a rate of \$343.80 with house, fuel and light provided. Mr. A. Deschenes was the successful applicant for this position and established residence in the station dwelling. The Redemptorist Fathers, custodians of the Shrine, have approached the Company on many occasions with a request to purchase the property at Ste. Anne Church which is centrally located within the Shrine. Late in November 1964 a transaction was completed which, effective May 1, 1965, transferred the property and building from the Company to the Fathers. In December 1964, Mr. A. Deschenes was advised by the Company that he would have to vacate the premises which he occupied effective May 1, 1965 and that in accordance with article 24 (g) of the agreement his rate of pay would be increased by \$15 per month on that date, and the deduction of \$5 per month provided for in article 24 (a), would be discontinued. The Union protested that the Company's action was a violation of the agreement and has processed the matter as a grievance through the various steps of the Grievance Procedure.

FOR THE EMPLOYEES:

(SGD.) F. M. SHEAHAN
SYSTEM GENERAL CHAIRMAN

(SGD.) J. E. LEBLANC
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) T. A. JOHNSTONE
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

W. S. Hodges	– Labour Relations Assistant, Montreal
N. A. McLean	– Labour Relations Assistant, Montreal
A. J. DeTorto	– Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

F. M. Sheahan	– System General Chairman, Montreal
J. E. LeBlanc	– General Chairman, Montreal
G. E. Hlady	– General Secretary & Treasurer, Montreal
F. E. Easterbrook	– Vice-President, Montreal
J. A. Brunet	– District Chairman, Montreal

AWARD OF THE ARBITRATOR

In this matter there is no dispute as to the facts outlined in the Statement of Issue. The question is whether under article 24 (a) the Company has the right to discontinue house, fuel and light once those prerequisites have been granted.

Article 24 (a) reads, in part:

At stations where dwelling, fuel and light is shown in the Wage Scale as being provided with the position, the dwelling so provided will be reserved for the use of the agent and his family ...

Article 24 (g) reads:

Should the Company require an agent to vacate the dwelling provided, or if the dwelling is destroyed by fire and a reasonably suitable substitute is not provided by the Company, the payroll deduction will be discontinued and an amount of fifteen dollars (\$15.00) per month will be added to the rate for the position of agent in lieu of dwelling, fuel and light.

Mr. Sheahan placed reliance upon the fact that, according to his records, from the time article 24 (g) appeared in the agreement the only reasons "accepted by both parties" for such withdrawal, as he described it, were:

- (1) Loss of station dwelling by fire.
- (2) The station dwelling becoming uninhabitable.
- (3) The dwelling being required by the Company for the expansion of its facilities.

There is nothing in the provision, of course, that contemplates the Union's concurrence being necessary as to a reason for such a withdrawal.

For the Company Mr. Hodges claimed that article 24(a) contained no ambiguity, so what occurred with respect to other claims, could have no legal effect upon the present situation; that without ambiguity, and without any qualification to its plain language giving authority to the Company to require an agent to vacate a dwelling so provided, the Arbitrator was required to give effect to the executed provision, not to what occurred in the past or to any understanding gained by the Union in its administration.

This Arbitrator has had occasion since accepting this office to stress in judgements that past practice can have no bearing upon an interpretation of a provision unless it is ambiguous.

I find the section in question contains no ambiguity. It indicates clearly an intention of the parties that the Company may require an agent to vacate such a dwelling. For the inconvenience thus entailed, the parties have mutually agreed that he be compensated in the sum of \$15.00 being added to his monthly income.

In this matter the Company exercised the right the Union granted it by this provision and also carried out its obligation to compensate the claimant by a \$15.00 addition to his monthly salary.

For these reasons this claim must be disallowed.

(signed) J. A. HANRAHAN
ARBITRATOR