

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 39

Heard at Montreal, Monday, June 13th, 1966

Concerning

CANADIAN NATIONAL RAILWAYS

and

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

DISPUTE:

The Union claims that the Company violated the fourth paragraph of Article 20(a) when it ceased payment of expenses for living accommodation to Mr. K.D. Roche at the expiration of a three-month period.

JOINT STATEMENT OF ISSUE:

Mr. K. D. Roche is an Agent-Operator employed at Mundare, Alta., who, in accordance with article 26(b) of the collective agreement, holds rights as a Relief Dispatcher at Edmonton, Alta.

On June 7, 1965 Mr. Roche was the successful applicant for a temporary position of Dispatcher at Saskatoon, Sask. He commenced work on that position on June 17, 1965 but, before completing that assignment, he was again the successful applicant for another temporary position as a Dispatcher. He started work on the second temporary position on September 28 at Kamloops, B.C. Mr. Roche was paid expenses for living accommodation for 68 days while employed at Saskatoon and for 27 days while employed at Kamloops for a total allowance of 95 days.

The Company stopped payment of expenses for living accommodation at the expiration of the 95 days on October 25 on the basis of article 20(a) of the agreement which provides that expenses for living accommodation will be paid for a period up to, but not exceeding, three months.

The Union protested the Company's action and claimed that, when Mr. Roche commenced a new assignment at Kamloops, he commenced a new three-month period of entitlement to expense allowances.

The matter has been progressed as a grievance through the various steps of the Grievance Procedure.

FOR THE EMPLOYEES:

(SGD.) H. HLADY
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) E. K. HOUSE
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

W. S. Hodges – Labour Relations Assistant, Montreal
D. McGrath – Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

H. Hlady – General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

As indicated in the Joint Statement, on June 7, 1965, the grievor's classification was that of a relief dispatcher at Edmonton, Alberta, which is in the Mountain Region.

A relief dispatcher was said to be an employee appointed to learn the skills of a dispatcher who, if he qualifies, is granted seniority as a dispatcher and is entitled to perform relief work as a dispatcher in the office in which he has been appointed as a relief dispatcher. The rights of relief dispatcher are outlined in the second paragraph of article 26(b) and the obligations of a relief dispatcher are defined in the third paragraph of the same article.

On the date mentioned, the grievor's base was Edmonton, Alberta. However, on that date the grievor was a successful applicant for a temporary position as dispatcher at Saskatoon, Saskatchewan, in the Prairie Region. He commenced working there on June 17, 1965. Before completing the term required there, however, he made another application and received an appointment to another temporary position as dispatcher in Kamloops, B.C., the Mountain Region.

The representative for the Brotherhood claimed that since both these appointments were by bulletin, this made applicable a provision that became effective on July 1, 1965, is article 20(a) and reads:

Relief Dispatchers assigned by bulletin to temporary vacancies or temporary new positions of sixty (60) days or more in accordance with their seniority as provided by article 26(b) will be allowed \$3.50 per day expenses for living accommodation, up to but not exceeding three (3) months that such accommodation is required away from their headquarters ...

Under that provision the Company paid the grievor at the rate of \$3.50 per day for the sixty-eight days he worked at Saskatoon and for twenty-seven days while he worked at Kamloops.

For the grievor it was argued that when he took his second appointment of another three months, this should have been considered the commencement of another period. An interpretation was sought as to whether or not the maximum of three months should apply to a combination of two or more bulletins.

For the Company, however, it was argued the grievor was not entitled to any expenses; that, in fact, he had been paid in error for the period noted.

The base for this reasoning was what is contained in article 26(b) of the agreement. This, it was contended, encompassed the rights and obligations of the grievor as a relief dispatcher. In its second paragraph it is provided that relief dispatchers "will only be entitled to relief work in the office in which they were appointed as relief dispatchers ..."

Paragraph 3 set forth the obligations binding a relief dispatcher. Its language confines its application to relief dispatchers in "their region":

Relief Dispatchers will be required, in accordance with their seniority as Dispatchers, to protect Trick Dispatchers' positions in permanent vacancies on their Region and all temporary vacancies and temporary new positions (which it is known will exist for sixty days or more) in the office to which appointed. Relief Dispatchers failing to exercise their seniority in accordance with the provisions of this rule will forfeit their seniority as Dispatchers and their names will be removed from the seniority list of Dispatchers. ...

It was conceded the grievor had the right to apply for an opening other than in Edmonton or the Mountain Region. This he would do under the provisions of article 5(b). On both occasions he did so of his own volition. The Company did not "require" him to do so. Nothing in article 26(b), it was stated, covered such action. Therefore, the language of article 20(a), indicating an intention to provide temporary assistance to a relief dispatcher obliged under paragraph 3 of article 26(b) to move to another locality, had no application.

The representative of the Company stated the grievor was not a relief dispatcher when he commenced working in Saskatoon or Kamloops – not, at least, as outlined in article 26(b). Its provisions governed him while at the Edmonton office. He moved out of its scope when he made application outside that area. He reached his status as a dispatcher in both instances via article 5(b) of the collective agreement.

A study of the applicable provisions convinces the governing distinction in the circumstances related is the route taken by the employee. Article 5, headed "Bulletining and Filling Positions" contains no suggestion that where

he has on his own initiative sought another position as a dispatcher while based under the provisions of article 26(b), as in the case of the grievor, the Company will provide expenses for living accommodation. On the other hand, article 20(a) makes specific mention of article 26(b), indicating the Company's appreciation of a reasonable obligation created for it when "requiring" a relief dispatcher, as outlined in the third paragraph thereof, to take an assignment. An involuntary disruption of his existing accommodation merited financial assistance for a period while making new arrangements.

One can appreciate the negotiating difficulty facing a Union in an attempt to secure a comparable benefit for an employee who seeks to better his own personal course with the Company by seeking an appointment outside his own region. The situation of the Company requiring an employee to move undoubtedly brought into effect article 20(a). I am satisfied that is its purpose and scope.

This finding obviates the necessity of determining the question as to whether a combination of three month periods is intended by the existing provision. Since the contract is open, the Arbitrator suggests consideration of clarifying what the situation would be if the Company required a relief dispatcher to take two or more continuous assignments that extended beyond three months.

For the reasons outlined this grievance is dismissed.

(signed) J. A. HANRAHAN
ARBITRATOR