

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 40

Heard at Montreal, Monday, July 11th, 1966

Concerning

**CANADIAN NATIONAL RAILWAYS**

and

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION**

### DISPUTE:

The Union claims that the Company violated article 17(e) of the collective agreement when, during 1964, 29 Telegraphers on the Chaleur area did not receive their vacation. The Union further claims that the Company violated article 12(b) when it paid 25 of these employees money, in lieu of vacation, at straight time rates instead of at punitive rates.

### JOINT STATEMENT OF ISSUE:

On October 16, 1964, the Company informed the Union that due to unforeseen circumstances some Telegraphers would not be able to be relieved for vacation during 1964 and proposed that these vacations be deferred until 1965. The Union refused to concur with this proposal but, on December 21, 1964, agreed that the employees affected would be given a choice of deferring their vacation or accepting pay in lieu thereof.

On January 7, 1965, the Union requested that payment in lieu of vacation be made at punitive rates and this request was denied by the Company. The employees were canvassed during the last week of January 1965 and 25 indicated their preference for payment in lieu of vacation and four requested deferred vacation.

The Union progressed their request for punitive rates for payment in lieu of vacation as a grievance.

### **FOR THE EMPLOYEES:**

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

**(SGD.) J. E. LEBLANC**  
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

And on behalf of the Brotherhood:

F. M. Sheahan – System General Chairman, Montreal

F. E. Easterbrook – Vice-President, Montreal

J. E. LeBlanc – General Chairman, Montreal

### AWARD OF THE ARBITRATOR

As indicated the employees concerned had their 1964 vacations deferred until 1965. This was reluctantly agreed to by their representatives when the Company indicated, because of the emergency existing through lack of qualified telegraphers, that they intended invoking the provisions of **Regulations Respecting Annual Vacations**, passed pursuant to the **Annual Vacations Act**. An application to the Director, either by way of a written agreement between the employer and the employee, or by a written application by the employer, permits a postponement.

At the outset it is of interest to note that these **Regulations** provide in section 4(2) that when a postponement occurs the employer is to "pay the employee the vacation pay to which that employee is entitled."

These employees were paid for the hours they worked, plus a day's pay in lieu of each day of their vacations. This represented double-time. These claims are based on the claim that the employees should have been paid at punitive rates, such as provided in article 12(b) of the current Telegraphers' Agreement. It reads:

... However, a regularly assigned Telegrapher will, if required to work on either of his rest days, be compensated for time worked during the hours of the regular assignment on such days at one and one-half times the pro rata rate ...

This would mean that the vacation pay for these employees would be double-time and one-half.

The Union's representative urged the vacation periods are rest periods the same as are assigned rest days or assigned rest periods on positions accumulating time. Therefore, those concerned should be paid accordingly.

For the Company it was urged that article 17(e), providing for the granting of a vacation within a twelve month period immediately following the completion of the calendar year of employment, had been amended by mutual agreement, and was therefore not violated.

It was urged that article 12(b) had no bearing upon vacations, having been negotiated for the purpose indicated by its language.

The Company's representative argued that since neither the agreement nor the regulations of the Annual Vacations Act, provide for payment in lieu of vacation be made at punitive rates, what was being sought by these claims was an attempt to gain through arbitration a concession which properly should be sought through negotiation.

It is to be noted that the second paragraph of article 17(b) provides that "Other telegraphers [the first paragraph dealing with relief employees] will be compensated for vacation at the rate of pay of their regular positions ...".

A study of article 12 indicates it was negotiated for the purpose of providing, in various ways, for the two rest days to which employees are entitled following completion of a work-week of forty hours. The time and one-half premium provided for working on those days is the usual provision generally prevailing throughout industry. Anyone familiar with negotiating collective agreements knows the effort that was put forth to have this prevail. In certain industries efforts continue to raise the premium of one and one-half to double-time for employees working on rest days.

To the Arbitrator's knowledge no agreement he has seen provides in a similar manner with respect to vacation periods. This agreement is silent in that respect.

To attempt to enlarge the scope of article 12(b) beyond its plainly stated limits by way of an arbitration decision would certainly be usurping the functions of those who have the responsibility to negotiate changes in this agreement. No such authority is given the Arbitrator.

Briefly, double and one-half time for vacations not taken remains a matter for negotiation between the parties.

For these reasons these claims must be dismissed.

**(signed) J. A. HANRAHAN**  
**ARBITRATOR**