CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 45

Heard at Montreal, Monday, September 12th, 1966

Concerning

CANADIAN NATIONAL RAILWAYS

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Claims submitted by Yard Foreman at Vancouver when not permitted to work as yard helpers.

JOINT STATEMENT OF ISSUE:

On nine occasions between March 17 and May 16, 1965 the Company refused to allow Yard Foremen R.M. Rockandel and D.P. Bartels of Vancouver, B.C., to vacate their regularly assigned positions as Yard Foremen and take work as yard helpers on temporary vacancies. On each occasion Yard Foremen Rockandel and Bartels submitted a loss of earnings claim for eight hours pay at yard helper's rate, in addition to the pay received for their regular assignments, on the grounds that the Company violated article 8, clause (b), paragraph 1, of the collective agreement.

The Company declined payment of the claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) H. C. WALSH	(SGD.) E. K. HOUSE
GENERAL CHAIRMAN	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

R. St. Pierre	– Labour Relations Assistant, Montreal
A. J. DelTorto	– Labour Relations Assistant, Montreal
A. D. Andrew	– Senior Agreements Analyst, Montreal

And on behalf of the Brotherhood:

H. C. Walsh	– General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

The facts established that bulletins were issued during November, 1964 inviting applications for two positions as yard foremen in the Vancouver Yard. When no applications were received, Yardmen R.M. Rockandel and D.P. Bartels were assigned as yard foremen in November, 1964.

Following the assignment to yard foremen's positions these employees sought to exercise seniority on yard helpers' positions for temporary vacancies as indicated in the Joint Statement of Issue. This the Company refused on the authority of the third paragraph of clause (a) of article 8 of the agreement, reading:

> An employee hired as yard helper subsequent to February 16, 1959, and promoted to yard foreman will not be permitted to hold an assignment as yard helper at any terminal or yard while a junior man is employed as yard foreman at such terminal or yard.

Bartels' seniority as yard helper dates back to February 6, 1960 and Rockandel's to June 19, 1961. Therefore, these two senior yard helpers were hired subsequent to the date mentioned in the provision quoted. As stated, they had been promoted to foremen.

The representative for the Brotherhood referred the Arbitrator to minutes of a meeting held between the parties in 1958 and to certain proposals for changes to article 8 suggested by management at that time. As claimed by the Company, it is of course the existing provision that must be interpreted.

The principal claim made for these employees was that the first paragraph of clause (b) of article 8 of the current Yardmen's agreement requires that all positions shall be bulletined and indicates that Yardmen are assigned by bulletin. The third paragraph of article 8, clause (b) indicates that a temporary vacancy will not be bulletined. It was suggested the fourth paragraph indicates that a yardman holding a temporary vacancy is not assigned to same, as it states:

> The temporary vacancy as mentioned in this clause refers to the position of the man absent from this assignment.

Therefore, it was claimed, yardmen hired subsequent to February 16th, 1959, by being assigned to a foreman's position which was bulletined, complied with the requirement of the Rule and are entitled to exercise seniority to temporary vacancies the same as yardmen hired prior to 1959.

The first paragraph of article 8, clause (b) reads:

> All positions shall be bulletined, and yardmen will have preference to assignments according to seniority. A man accepting assignment will hold same (unless conditions of assignments or hours are materially changed by the Company) until he can move to fill a vacancy or accept a newly created position.

For the claimants it was argued the words "… until he can move to fill a vacancy …" should allow them to leave their yard foremen's assignments and work in temporary vacancies in yard helpers' assignments.

For the Company it was argued that those words are conditional upon other applicable provisions of the collective agreement. Of determining importance in this area is the third paragraph of article 8, clause (a) quoted, that specifically prohibits certain yard foremen from working assignments as yard helpers in a yard or terminal while a junior man is employed as yard foreman at such yard or terminal. The Company's statement that had the claims of Rockandel and Bartels for temporary vacancies been granted, two junior men to them would have been working as yard foremen in the same yard was not refuted.

The representative for the Company rejected the suggestion on behalf of these employees that they, having established themselves on a regular assignment as foreman, are now entitled to all prerogatives and rights accruing to other Yardmen. This, it was claimed, was in direct conflict with the plain language of the third paragraph of article 8, clause (a); that this provision places a definite restriction on the application of clause (b); that the words "until he can move to fill a vacancy …" applies only to a vacancy as a yard foreman.

As an indication that those representing these employees appreciate the true meaning of the provisions in question, the representative for the Company pointed to the submission made by the Brotherhood before a Conciliation Board in February, 1966, asking for the deletion of paragraphs 2 and 3 of article 8, clause (a), reading in part:

> … are not allowed the prerogatives and privileges extended to making day work preference and being allowed to exercise seniority to temporary vacancies or extra engines in the capacity of helper.

The unanimous report of the Conciliation Board did not recommend acceptance of the demand.

A study of the applicable provisions convinces the deletion sought before the Conciliation Board is what would be necessary for these claims to succeed. Two junior men being employed at the period in question, the claimants being hired as yard helpers subsequent to February 16th, 1959, after being promoted to yard foremen, are prevented by the third paragraph of article 8, clause (a) from holding an assignment as yard helper.

In the opinion of the Arbitrator the word "assignment" as used in this paragraph, lacking a specific definition in the agreement itself, by its ordinary dictionary meaning is broad enough to include "an allotting or appointing to a particular use." Thus, those restricted by the provision quoted are not permitted to be "allotted or appointed" as yard helpers while a junior man is employed at such terminal or yard.

This is what the parties to the agreement have decreed.

For these reasons this claim is denied.

(signed) J. A. HANRAHAN
ARBITRATOR