CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 175

Heard at Montreal, Tuesday, October 14th, 1969

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

DISPUTE:

Claim that the Company violated Article 22.16 when it denied Warehouseman Grade 2, Mr. A.H. Penny, Corner Brook his annual vacation August 1, 1969.

JOINT STATEMENT OF ISSUE:

Warehouseman Grade 2, Mr. A.H. Penny, made application for his annual vacation to commence on August 1, 1969.

The Brotherhood claims violation of Article 22.16 and requests that he should have commenced his vacation on August 1, 1969 as requested.

The Company denied the request.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) E. E. THOMS	(SGD.) K. L. CRUMP
GENERAL CHAIRMAN	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

P. A. McDiarmid	– Labour Relations Assistant, Montreal
G. James	– Assistant Labour Relations Officer, Moncton

And on behalf of the Brotherhood:

E. E. Thoms	– General Chairman, Freshwater
G. M. Stratton	– Local Chairman, Corner Brook
G. W. Parsons	– Local Chairman, Port aux Basques
W.C.Y. McGregor	– International Vice President, Montreal

AWARD OF THE ARBITRATOR

Article 22.16 of the collective agreement provides as follows:

> **22.16** Application filed prior to February 1st, in so far as it is practicable to do so, will be allotted vacation during the summer season, in order of seniority of applicants, and unless otherwise authorized by the officer in charge, the vacation period shall be continuous. Applicants will be advised in February of dates allotted them, and unless otherwise mutually agreed employees must take their vacation at the time allotted.

The grievor did make application for his 1969 vacation prior to February 1. It is his contention that, having regard to his seniority, he was entitled to a vacation commencing August 1. It may be noted that all of those whose

vacations commenced at that time had greater seniority than the grievor, so that even if the grievance be taken entirely on the union's terms there is no basis in fact for the relief claimed. The grievance may be read as one generally seeking a more favourable vacation on grounds of seniority, and it is proper and desirable to deal with the matter thus broadly.

For purposes of allocating vacations, the company divided its employees into two groups, one of office and one of freight shed employees. At Corner Brook, where the grievor is employed, there were 38 freight shed employees and 16 office employees. It would appear that both classes of employees come within Seniority Group 2 for the purpose of promotion and seniority, as set out in article 3.1. There is no express provision for subdividing these employees into smaller occupational groups for the purpose of vacation allocation. It may be observed, however, that there is no express provision for subdivision on geographical lines either, and it may be that if the union's contention were correct, the grievor would then be in a worse position, because of the superior claims of senior employees in other locations.

In any event, the company, for the purposes of 1969 vacations, considered the office employees at Corner Brook and the freight shed employees at Corner Brook as separate and appropriate groups, and allocated vacation periods among the members of those groups so as to retain an efficient working force, giving preference as to vacations to those in each group with the greatest seniority. The grievor was a member of the freight shed group, being classified as a Warehouseman Grade 2. He was treated fairly as to seniority within that group. There are a number of employees senior to him in the group however, and he was unable to take a vacation when he wished, commencing August 1, but was required instead to take a vacation commencing June 4. The office employees constituted a smaller group, and contains a number of persons with lower seniority than those in the freight shed group. As a result, office employees with less seniority than the grievor were able to take vacations at more favourable times.

It is clear from article 22.16 that dates for vacations are to be allotted by the company, and that this is to be done during the summer season and in order of seniority "as far as it is practicable to do so". The question is whether it would have been practicable for the company to have treated at least the Corner Brook employees as coming all within one group for purposes of vacation. Put another way, the question is whether the company properly treated the office and freight shed employees as constituting separate groups for this purpose.

I am unable to agree with the union's contention that the word "practicable" should be read as meaning "capable of being done, effected or performed by human means, or by powers that can be applied". Of course employees could have been given vacations on the basis the union suggests. If this was what was intended, there would have been no necessity for the qualification of "practicability" in the collective agreement. The term was of course intended to have some meaning, and I have no doubt that the meaning is that vacations should be allotted in order of seniority as long as that does not disrupt unduly the efficient operations of the company. Where there are two aspects of the company's operations, as here, it is obvious that the efficient continuation of the operations of each must be considered. It would not in fact be practicable for the company to allocate vacations in the manner contended for by the union.

The union also pointed out that of the office employees, three (or about one in five) were permitted to be away at one time, whereas of the freight shed employees only five (or about one in eight) were permitted to be away at one time. I can see no significance in this disparity. In each case it is the requirements of operations that are to be considered, and the need to keep a nearly full complement in one group need have no precise relationship to the need for another group.

For the foregoing reasons, it is my conclusion that there has been no violation of the collective agreement. The grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR