

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 265

Heard at Montreal, Tuesday, February 9th, 1971

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

The Brotherhood claims that the Company violated Article 9, Section (d) of Agreement 5.15 when it granted Mr. E.A. O'Hara an extended leave of absence.

JOINT STATEMENT OF ISSUE:

The collective agreement provides for leave of absence for three months, which may be extended. The Company granted Mr. O'Hara leave of absence from September 17, 1969 to May 5, 1970. The Brotherhood contends that as O'Hara did not file separate applications for each three-month period he has forfeited his seniority; therefore upon his return to service he should not have been allowed to displace. The Brotherhood is claiming the difference in salary on behalf of the employee displaced by Mr. O'Hara. The Company declined the claim.

FOR THE EMPLOYEES:

(SGD.) J. A. PELLETIER
NATIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) K. L. CRUMP
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. O. McGrath – System Labour Relations Officer, Montreal
J. McBratney – Manager Personnel Development, Montreal
G. Jourdenais – Personnel Supervisor, Montreal

And on behalf of the Brotherhood:

J. A. Callaghan – Representative, Montreal
D. Osborne – Local Chairman, Montreal
P. E. Jutras – Regional Vice-President, Montreal

AWARD OF THE ARBITRATOR

Article 9 (d) of the collective agreement provides as follows:

- 9 d)** Employees, at the discretion of the Railway, shall be granted leave of absence not to exceed three (3) months, permission to be obtained in writing, and unless employees so furloughed report for duty on or before the expiration of such furlough, they shall forfeit their seniority list, if they return to work thereafter, such employees shall rank as new employees, provided, however, such furlough may be extended by application in writing to the proper officer in ample time to receive permission or return to duty at the expiry of leave, or absolute proof is furnished as to bona fide sickness preventing such return.

Leave of absence under this rule shall not be granted for the purpose of engaging in work outside the Railway service, except in cases involving sickness or other exceptional circumstances or when made the subject of mutual agreement between the proper officer of the Railway and the General Chairman.

This provision contemplates that the company may grant leaves of absence, and extensions thereof, to its employees. While leaves of absence in the first instance are not to exceed three months, there is no expressed limit on the amount of time through which a leave may be extended. Where an employee does not report for work at the conclusion of a leave of absence, then, as the provision sets out, his seniority is forfeited.

There is no limitation as to the period within which a request for an extension of a leave of absence must be made, save only that it must be made "in ample time to receive permission". In this case, an extended leave of absence was requested at the outset, for the purpose of attending university. This request was granted. Since it is within the company's discretion to grant leave and to extend it, and since the extension was sought prior to the expiry of the leave, there has been no violation of the provisions of the agreement. The agreement does not require that separate applications be made, nor that extensions of leave must be limited to three-month periods. It would be improper to read such restrictions into the agreement, particularly where their effect upon the employee concerned would be so drastic. It is recognized, of course, that retention of seniority rights by an employee on leave of absence might be regarded with disfavour by others who continue at work. Where existing seniority rights are to be limited or restricted, however, the collective agreement must clearly so provide. In the instant case the granting of an extended leave of absence to Mr. O'Hara came within the terms of Article 9 (d).

There having been no violation of the agreement, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR