

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 285

Heard at Montreal, Tuesday, May 11th, 1971

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

The Brotherhood is claiming that OS&D Clerk Richard Budgell performed the duties of Warehouseman Grade 3 for two and one-half hours on various dates and should receive the higher rate of a Warehouseman Grade 3.

JOINT STATEMENT OF ISSUE:

On October 20, 21, 22, 23, 26, 27, 28, 29, 30, November 2 ? 3, 1970 OS&D Clerk R. Budgell was assigned to perform work in the shed. The Brotherhood claims that the work performed was that of a Warehouseman Grade 3 and therefore in accordance with Article 19 in the 6.1 Agreement, Mr. Budgell is entitled to receive the difference between the rate paid a OS&D Clerk and that paid a Warehouseman Grade 3.

The Company has denied the Brotherhood's request.

FOR THE EMPLOYEES:

(SGD.) E. E. THOMS
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

P. A. McDiarmid – System Labour Relations Officer, Montreal
L. V. Collard – System Labour Relations Officer, Montreal
G. James – Labour Relations Assistant, Moncton
H. Peet – Employee Relations Supervisor, St. John's
J. Nicholson – Superintendent Express, St. John's

And on behalf of the Brotherhood.

E. E. Thoms – General Chairman, Freshwater, P.B.
M. J. Walsh – Local Chairman, St. John's
G. D. Noseworthy – Local Chairman, Argenticia

AWARD OF THE ARBITRATOR

On the days referred to, the grievor did in fact perform certain work in the shed for some two and one-half hours on each occasion. According to the union, he was engaged in “checking traffic” with a Warehouseman Grade 3 whereas according to the company, he was “matching waybills to shipments received on hand”. From the material before me, it is not clear what were the actual tasks the grievor performed at the times in question. I am prepared, however, to proceed on the assumption that the grievor was “checking” in the shed at the times in question, as a Warehouseman would do. Such work, it seems, was not part of the regular duties of the grievor’s classification, that of OS&D Clerk.

Article 19.1 of the collective agreement provides as follows:

19.1 Employees temporarily assigned for one hour or more, cumulative, in any one day, to higher rated positions shall receive the higher rate while occupying such positions, due regard being had to apprentice or graded rates. Employees temporarily assigned to lower rated positions shall not have their rates reduced.

The question is whether the grievor was, on the occasions in question, temporarily assigned to a higher rated position. According to the company, the grievor’s predecessor in this work had been a Clerk, a Mr. Kendall. It was the union’s contention that the work had been done by a Warehouseman Grade 3. The company acknowledged that it was possible that a Warehouseman Grade 3 had replaced Mr. Kendall for a time, and in any event, it is clear that work such as this would properly come within the scope of a Warehouseman Grade 3’s classification. Again, I am prepared to proceed on the assumption that, on the occasions in question the grievor took over work which had been performed by a Warehouseman Grade 3.

It does not follow, however, that the grievor was himself temporarily assigned to the position of a Warehouseman Grade 3. This is because the work in question was common to the classifications of Warehouseman Grade 2 and Warehouseman Grade 3 (if not also to that of Clerk). A person performing such work could be said to be performing the work of either a Warehouseman Grade 2 or a Warehouseman Grade 3. The distinction between the classifications as far as this sort of work is concerned is based on the amount of time spent at it. The duties of a Warehouseman Grade 2 include the performance of such work up to four hours per day; a Warehouseman Grade 3 may perform more. In this case, the work in question was performed for two and one-half hours per day. On the assumption, then, that it was Warehouseman’s work, it can only be said to have been that of a Warehouseman Grade 2.

The classification of Warehouseman Grade 2 is a lower-rated classification than that of the grievor. Article 19, in such circumstances, applies so as to protect the grievor from any reduction in his rate. His rate was not reduced, and the article was not violated.

Accordingly, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR