

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 413

Heard at Montreal, Tuesday, July 10th, 1973

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL
WORKERS

DISPUTE:

Violation of Articles 2.1 and 10.1 of Agreement 5.1.

JOINT STATEMENT OF ISSUE:

A position of Ticket Agent-Operator at Stellarton, N.S., covered by agreement with the Transportation-Communication Division of BRAC became vacant and was advertised to the employees within that bargaining unit. The Brotherhood contends that as they represent Ticket Clerks the position should be advertised to employees covered by Agreement 5.1. The Company contends that Ticket Agent-Operators are included in the classifications certified by the Canada Labour Relations Board and represented by the Transportation-Communication Division of the Brotherhood of Railway, Airline and Steamship Clerks.

FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) J. A. PELLETIER (SGD.) G. H. BLOOMFIELD

NATIONAL Vice-President ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

G. J. James – Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

J. A. Pelletier – National Vice-President, Montreal

P. E. Jutras – Regional Vice-President, Montreal

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AWARD OF THE ARBITRATOR

In 1964 the Transportation-Communication Division of BRAC, was certified as bargaining agent for a unit of employees in the area in question and which included persons classified as Ticket Agent-Operators. A collective agreement was entered into between the Company and the Transportation-Communication Division of BRAC for that unit of employees, including the Ticket Agent-Operators. At the same time there was in effect a collective agreement between the parties to this case which covered clerical employees in general, with a number of exceptions, including persons exercising train order skills and handling telegraph message traffic. For many years it would appear to have been recognized that the Ticket Agent-Operator at Stellarton came within the class of persons excluded from the collective agreement between the parties.

On the occasion of the posting of a vacancy in the position known as Ticket Agent-Operator at Stellarton, the Union alleges that the present duties of the job no longer place it among the exclusions from the bargaining unit, and that it should therefore be advertised pursuant to the provisions of

this collective agreement. The issue, then, is whether the duties and responsibilities of the job are such as to bring it within the scope of the bargaining unit as defined in the collective agreement.

The matter is one which arises as between the two parties to the collective agreement before me. It does not involve the representational rights of any other Union, or the interpretation of any other collective agreement. In this respect, reference is made to the remarks set out in **Case No. 338**. The issue does not relate to the appropriate scope of the bargaining unit, but is simply whether a particular job comes within the unit or not, and this issue must be determined having regard to the facts of the individual case. More particularly, the issue in this case is whether an employee in the classification of Ticket Agent-Operator at Stellarton is one "exercising train order skills and handling telegraph message traffic".

As in **Case No. 337**, the question here is whether the person performing the work is, by reason of the sort of work performed, in fact a member of the bargaining unit, regardless of his ostensible Job classification. In some cases, as for example in **Case No. 375**, it is appropriate for an employee in one bargaining unit to perform work which might also be performed by an employee in another unit. Indeed, there has for some time been a considerable overlap between the duties of the Ticket Agent-Operator at Stellarton and those of employees in the bargaining unit. What distinguished the Ticket-Agent-Operator's job was, as the collective agreement contemplates, the exercise of train order skills and the handling of telegraph message traffic. In some cases the employment of a person with the ability and authorization to perform such work may be required by law, as in **Case No. 381**. It is not suggested, however, that that is so in the instant case. Here, since the certification of the Transportation-Communication Division of BRAC as bargaining agent for Ticket Agent-Operators there has been a significant change in their work. In fact, at Stellarton, the Ticket Agent-Operator never exercised train order skills. In recent years he has ceased to perform telegraph work.

It is, as the Company correctly argued, not relevant that Ticket Agent-Operators, properly coming within the Transportation-Communications Division bargaining unit, perform ticket work, or other work which might be performed as well by an employee coming under collective agreement 5.1. For the purposes of the instant case, however, what is material is the presence or absence of the distinguishing features which would exclude a person performing such work from the bargaining unit. There are two such features, the exercise of train order skills and the handling of telegraph message traffic. These features are precisely set forth, and must be established if the person in question is to be brought within the exclusion. In the instant case, train order skills are not exercised and telegraph message traffic is not handled. Accordingly, it must be concluded that the employee performing the work in question does not come within the exclusions from the bargaining unit. As noted above, such an employee would otherwise come within the bargaining not being excluded, the job ought therefore to have been posted pursuant to the applicable provisions of collective agreement 5.1. This conclusion is reached having regard to the circumstances of the particular case as they appear from the material before me.

For the foregoing reasons, the grievance is allowed.

(signed) J. F. W. WEATHERILL

ARBITRATOR