CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 514

Heard at Montreal, Tuesday, September 9th, 1975

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood alleges that the Company violated Article 4.5 of the Agreement when on specified occasions during the summer of 1973 it gave certain employees notice that no work would be required in their positions as a result of the rotating railway strike. (A. Filion M. Hamlin, H. Kahan, F. Shaw, A. Hosmer, P. Wiwcharuk, et al)

JOINT STATEMENT OF ISSUE:

On July 27, 30, August 1,2,7,8, and 20, 1973 the employees covered by these grievances were advised on arrival at the Company premises that there would be no work in their positions due to the rotating railway strike which had commenced on July 26, 1973. The Company gave these notifications following the provisions of Article 13.2 of the Agreement as it applies to a strike situation.

The Brotherhood alleges that the employees affected are guaranteed eight hours' pay on these occasions under the provisions of Article 4.5. The Company contends that the employees affected were properly advised that there would be no work in their positions following the provisions of Article 13.2 and that the grievors have no claim under Article 4.5 as alleged.

These grievances have been processed through the various steps of the grievance procedure and ultimately to arbitration.

FOR THE EMPLOYEES:	FOR THE COMPANY
(SGD.) J. A. PELLETTER	(SGD.) S. T. COOKE
NATIONAL VICE PRESIDENT	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

P. A. McDiarmid	– System Labour Relations Officer, Montreal
J. A. Cameron	– Regional Labour Relations Officer, Winnipeg
D. J. Matthews	– Assistant Labour Relations Officer, Moncton
K. A. Pride	– Employee Relations Officer, Montreal
W. W. Wilson	– Labour Relations Assistant, Toronto

And on behalf of the Brotherhood:

W. H. Matthew	– Regional Vice President, Winnipeg
J. A. Pelletier	– National Vice President, Montreal
H. Henham	– Regional Vice President, Vancouver
L. K. Abbott	– Regional Vice President, Moncton
J. D. Hunter	– Regional Vice President, Toronto
G. Thivierge	– Representative, Montreal

AWARD OF THE ARBITRATOR

It is clear that, on the days in question, the grievors reported for duty on their regular assignments. In the usual course, they would have worked and been paid for eight hours. They would have had the benefit of the provisions of Article 4.5, if they did not work. That article provides as follows:

> **4.5** Regularly assigned employees who report for duty on their regular assignments shall be paid eight hours at their regular rate. Employees who are permitted to leave work at their own request shall be paid at the hourly rate for actual time worked, except as may be otherwise arranged locally.

On each of the days in question, however, the grievors, on reporting for work, were advised that there was no work available. Whether or not it would be proper to say that their positions were abolished, the fact is that, to use the term in its general sense, the grievors were laid off on those days, following their arrival at work. Article 13.2 contemplates the possibility of staff reductions, and provides for the giving of notice to the employees affected. The Article is as follows.

> **13.2** In instances of staff reduction, four working days' advance notice will be given to regularly assigned employees whose positions are to be abolished, except in the event of a strike or work stoppage by employees in the railway industry, in which case a shorter notice may be given. The Local Chairman will be supplied with a copy of any notice.

In the circumstances in issue here, there was in fact a strike or work stoppage by employees in the railway industry. Accordingly, the Company was justified in giving a notice of less than the four days contemplated by Article 13.2. No question arises in this case as to the sufficiency of the notice given.

The Company's position is that it need not pay the grievors pursuant to Article 4.5, because the general provisions of that article are superceded, it is argued, by the specific provisions of Article 13.2. A similar type of argument was successful in **CROA Case No. 247**. There, an employee who would, in the normal course, have been entitled to the eight hours' pay provided for by Article 4.5, was paid only for the four hours which he actually worked on the day there in question. That day, however, was a holiday, and the collective agreement dealt very precisely with the payment and other benefits to which an employee who worked on a holiday was entitled. Article 8.8 of that agreement dealt particularly with the situation involved in that case, and displaced the general provisions of Article 4.5 in that instance, where the two articles were in conflict. In the instant case, however, there is no conflict between Article 4.5 and Article 13.2. They deal with different matters. One provides for what is generally known as a "reporting allowance", the other with the length of notice to be given in case of staff reduction. In the instant case, assuming that the notice – which was instantaneous – given to the grievors was proper, there is no reason to conclude that they were thereby deprived of their reporting allowance. There is no conflict in the application of the two provisions, and nothing in the circumstances to prevent the application of the general provisions of Article 4.5.

In the instant case, the grievors did report for duty within the meaning of Article 4.5, and were therefore entitled to be paid eight hours at their regular rate, in accordance with that article. The grievances are accordingly allowed.

(signed) J. F. W. WEATHERILL
ARBITRATOR