CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 515

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 the provisions of Articles 13.2 and 13.3 (a) of the Agreement when on July 27, 1973 it gave notice to 26 employees on the St. Lawrence Region that no work would be required in their positions as a result of the rotating railway strike and advised them that they could not exercise their seniority to displace other employees. (R. Drisdelle, M. Pena et al)

JOINT STATEMENT OF ISSUE:

On July 27, 1973, 26 employees of the Equipment Department on the St. Lawrence Region 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 the previous day July 26, 1973. The Company gave their notification following the provisions of Article 13.2 of the Agreement as it applies to a strike situation and was necessitated by a reduction in the number of trains to be serviced.

The Brotherhood alleges that the Company action violated Article 13.2 and 13.3 (a) and that consequently the grievors suffered a loss of a day' pay. The Company contends that the grievors were properly advised that there would be no work in their positions following the provisions of Article 13.2 as it applies to a strike situation. The Company further contends that none of the grievors attempted to exercise their seniority and consequently there was no violation of Article 13.3 (a).

These grievances have been progressed 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:

P. E. Jutras	– Regional Vice President, Montreal
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

On the day in question the employees concerned would appear to have reported for duty on their regular assignments. Under Article 4.5 of the collective agreement, and as the Award in **CROA Case No. 514** makes clear, they would have been entitled to be paid eight hours at their regular rate. That claim was not, however, advanced as the basis of the grievors' claims in this case, although the same result – namely, a day's pay – is sought. In this case, the claim is based on the employer's refusal to permit the grievors to exercise their seniority rights, and to displace junior employees, immediately upon receipt of the notice that work was not available for them.

The Company gave notice of staff reduction to the grievors upon their arrival at work. This was a "shorter notice" than the four-day notice generally contemplated by Article 13.2. It was, it seems, proper because there was a strike or work stoppage by employees in the railway industry at that time. Article 13.2 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.

Article 13.3 provides for the exercise of certain rights by employees affected by a staff reduction, and there is no doubt that it would apply to the grievors, who had received notice under Article 13.2. Article 13.3 is as follows:

> **13.3** An employee whose position is abolished or who is displaced from his permanent position may:
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> **(a)** displace a Junior employee in his own seniority group (a P & S Department employee need not displace outside his respective region) on a temporary or permanent position, for whose position he is qualified, or
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> **(b)** displace the Junior permanently assigned employee, for whose position he is qualified (but not necessarily the positions of Office Boy, Call Boy, Watchboy, Red Cap or Messenger) in the seniority group containing his current job classification on any other Area in his Region, or
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> **(c)** after exhausting his seniority rights at his own station or terminal, he may elect to protect spare and relief work in his own seniority group at his present station or terminal or at any station or terminal on his Area at which he has previously been laid off or displaced providing work is available at such point. The number of employees protecting spare and relief work in any seniority group at any one point shall not exceed one such employee for every five positions established in that seniority group at that point.
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> Such an employee shall forfeit his seniority, if he does not notify the officer in charge and the Local Chairman, in writing, of his choice within ten calendar days from date of displacement or abolition of his position.
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> An employee who elects option (b) above will transfer all of his seniority rights to the new Area on the date of his appointment to that Area.
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> An employee who does not elect either option (b) or (c) above and has exhausted his rights under option (a) above will have his name placed on his Area laid off list.

While there is a time limit within which such rights must be exercised, there is no delay imposed on such exercise. The Company contends that the grievors did not seek to exercise these rights, but the material before me established that it was the Company's policy not to allow the displacement of junior employees on this occasion. In these circumstances, the Company cannot rely on the failure of the employees to make a claim which the Company has indicated it would refuse. It was, effectively, the Company's action (however understandable the reasons which

lead to it) which deprived the grievor of a days work to which, it appears, they were entitled. No question was raised as to the relative seniority of the grievors or as to their qualifications for jobs performed by junior employees on the day in question, nor is it clear that there would in fact have been work for all of the grievors. Having regard to the issue as stated, however, it is my conclusion that, as a matter of principle the grievors are entitled to succeed. In any event, as noted at the outset, the grievors would be entitled to payment under Article 4.5.

For the foregoing reasons, the grievances are allowed.

(signed) J. F. W. WEATHERHILL
ARBITRATOR