

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 517

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 13.2 of the Agreement when it gave oral notices to five employees of the Express and Intermodal Services that there would be no work in their positions at the Concord Terminal and further that the Company violated Article 13.3 in not allowing the grievors to immediately displace junior employees at work.

JOINT STATEMENT OF ISSUE:

The Brotherhood alleges that the oral notices given to Mr. L.F. Allison on August 6, 1973 and to Messrs. A.T. Ryan, H.O. Battice, R.G. Parker and S. Young on August 7, 1973 were contrary to the provisions of Article 13.2. It further alleges that in not allowing the grievors to immediately displace junior employees at work, the Company violated Article 13.3.

The Company contends that its oral notice to the grievors followed the provisions of Article 13.2 as it applies to the strike situation resulting from the rotating railway strike which had commenced on July 26, 1973. The Company further contends that it followed the provisions of Article 13.3 and allowed the grievors to displace on the first shift after they had identified the position they wanted to exercise seniority on and allowing the incumbent of that position to complete the assignment he had reported to work to perform.

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

FOR THE EMPLOYEES:

(SGD.) J. A. PELLETTER
NATIONAL VICE PRESIDENT

FOR THE COMPANY

(SGD.) S. T. COOKE
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:

L. K. Abbott	– Regional Vice President, Moncton
W. H. Matthew	– Regional Vice President, Winnipeg
J. A. Pelletier	– National Vice President, Montreal
H. Henham	– Regional Vice President, Vancouver

J. D. Hunter – Regional Vice President, Toronto
G. Thivierge – Representative, Montreal

AWARD OF THE ARBITRATOR

In this case, as in **CROA Cases 514 - 516**, employees were given notice of staff reduction pursuant to Article 13.2 of the collective agreement. Since there was, at the time, a strike or work stoppage by employees in the railway industry, a notice of less than four days was permissible. In the instant case, the grievors were advised there would be no work for them on the following day. From the material before me, it appears that copies of such notices were not furnished to the Local Chairman in timely fashion.

In my view, the giving of a copy of such notice to the Local Chairman is a condition of the implementation of a staff reduction of this sort. Article 13 deals generally with the matter of staff reduction, displacement and recall, and in such cases it is certainly of importance to the Union to be in a position to advise employees of their rights, and to understand the whole situation. As has been noted in the decisions in the immediately preceding cases, senior employees are entitled to be retained, and there is no provision which would delay the exercise of their rights in that respect. Thus, on the basis of what was said in **CROA Case No. 515**, and also on the basis of the reasoning in **CROA Case No. 462**, I conclude that, in the circumstances of the instant case, the Company did not meet the requirements of Article 13. Its notice was not, in fact, in full compliance with Article 13.2, and, in any event, Article 13 does not prevent the immediate exercise of seniority rights.

This case is not decided on the ground that the notices given to the grievors were oral rather than written. It is based rather on the determination that Article 13.2 was not fully complied with, in that the Local Chairman was not given proper notice, and that in any event the grievors were entitled to exercise their seniority rights forthwith.

For the reasons set out above, the grievances are allowed.

(signed) J. F. W. WEATHERILL
ARBITRATOR