CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 530

Heard at Montreal, Wednesday , October 15, 1975

Concerning

BRITISH COLUMBIA RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim for wages of Machine Operator Mr. V. Kampe from January 7, 1975 to January 17, 1975.

JOINT STATEMENT OF ISSUE:

A strike by Shop Craft Unions of the British Columbia Railway occurred on November 21, 1974.

On November 21, 1974, the Chief Engineer advised by teletype all Maintenance of Way Employees as follows:

> All Maintenance of Way Personnel
>
> Account work stoppage by some of the Railway employees with the consequent reduction in movement of traffic, it is necessary that the Railway work force be reduced.
>
> Therefore, unless you receive further instruction from an authoritive source in your department, effective with completion of shift on November 21, 1974 the position which you occupy under the Collective Agreement with the Brotherhood of Maintenance of Way Employees, Caribou Lodge No. 221, Lillooet Lodge No. 215 and Summit Lodge No. 252 is abolished under the provisions of subsection 4(A) of Section 4 as amended by Memorandum of Agreement dated February 26, 1969. Agreement has been reached with the System Federation General Chairman of your Organization to the effect that you will return to work, if and when required, without the necessity of positions having to be rebulletined.
>
> M.S. Wakely,
> Chief Engineer
>
> /End#
> M132 Confirm – Received 0025 Lines Nov. 21 18:59.

The grievor's position of Machine Operator with Extra Gang 307 was not abolished and he continued to work until leaving on annual vacation scheduled from December 10th, 1974 until January 2nd, 1975.

Extra Gang 307 was deactivated on December 13th, 1974.

Strike action on the British Columbia Railway ceased on January 6th, 1975, with pickets withdrawn that date.

Grievor reported for duty on January 19th, 1975 and resumed duty on January 20, 1975.

The grievor submitted a time return dated January 19th, 1975 claiming payment for all time worked between January 7th to January 17th by a junior machine operator.

Railway has declined payment of claim.

FOR THE EMPLOYEE: **FOR THE COMPANY:**

(SGD.) T. V. GREIG **(SGD.) T. TEICHMAN**
SYSTEM FEDERATION GENERAL CHAIRMAN **MANAGER, LABOUR RELATIONS**

There appeared on behalf of the Company.
H. Collins – Supervisor Labour Relations, Vancouver
D. Pysh – Labour Relations Assistant, Vancouver

And on behalf of the Brotherhood:
T. C. Greig – System Federation General Chairman, Winnipeg
G. D. Robertson – Vice President, Ottawa
F. L. Stoppler – Federation General Chairman, Edmonton

AWARD OF THE ARBITRATOR

It would appear that many positions on the Railway were abolished as of November 21, 1974, pursuant to the notice set out in the Joint Statement of Issue, above. The grievor's position was not one of these, and he continued to work until he went on vacation on December 10. While he was on vacation, his position was abolished. In my view, his position, like those affected earlier, would be covered by the same agreement made between the parties, to the effect that employees would return to work, if an when required, without the necessity of rebulletining the positions.

The grievor's position was reactivated on January 20, 1975, and he resumed duty at that time, this would be in conformity with the arrangement between the parties. The claim here made is for time worked by a junior employee between January 7 and January 17, 1975, on a job which it would appear the grievor was qualified to perform. The agreement with respect to the abolishing of positions and their reactivation without bulletining did not, it appears, affect the rights of senior employees to displace junior employees who remained at work, in accordance with the provisions of the collective agreement relating to the reduction of work forces.

The grievor was absent on vacation from December 10, 1974 until January 2, 1975. He did not report for work upon the conclusion of his vacation, nor did he report at the conclusion of the strike of the Shop Craft Unions. In fact, he did not report until January 19, and he appears subsequently to have submitted the claim in question. This claim would appear to be excessive in any event, since the junior operator, who was recalled to carry out certain work of snow and ice removal, returned to his own regular position, which was reactivated on January 14, in accordance with the agreement referred to above. The issue which remains is whether the grievor was entitled to be called for the snow and ice removal work performed by a junior employee from January 7 to January 14, 1975.

The work performed by the junior employee during that period was work on a temporary vacancy, and pursuant to subsection 6 (a) of Section 3 of the collective agreement then in effect (now, substantially, Article 14.4), was to be filled by "the senior qualified employee immediately available". From the material before me, it would not appear that the grievor, who had not reported to the Company at the conclusion of his vacation or even at the conclusion of the strike, was "immediately available".

The Union relies on what is now Article 15.7 of the collective agreement, which at the material times was subsection 6(a) of Section 4. That article provides that "when staff is increased or when vacancies of thirty days or more occur", laid-off employees are to be recalled in seniority order in their classifications. This, of course, was the case of a temporary vacancy, although in a sense of course it is clear that staff was increased. It is nevertheless questionable whether this provision would apply in the light of the particular agreement the parties had made with respect to the reactivating of positions temporarily abolished in the circumstances described.

In any event, on the assumption that the grievor would be entitled to the benefit of what is now Article 15.7 with respect to this vacancy, it does not appear that he was a "laid-off" employee for the purposes of that section, since he had not exercised any right of displacement within the 15-day period referred to in subsection 4(a) of Section 4 of the collective agreement then in effect (similar provisions now appear in Article 15). Had the grievor reported at the conclusion of his holidays, or even at the conclusion of the strike when the temporary vacancy became available, he would have been in a position to make this claim, and could have been advised as to any positions on which he might exercise seniority.

For the foregoing reasons, it is my conclusion that the railroad honoured its agreement with respect to the reactivating the positions abolished because of the strike, and that it did not violate any provisions of the collective agreement which might have been of benefit to the grievor had he reported in timely fashion following his vacation.

Accordingly the grievance is dismissed.

(sgd.) J. F. W. WEATHERlLL
ARBITRATOR