CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 541

Heard at Montreal, Tuesday, April 13, 1976

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 Article 9.17 when it did not automatically pay Express Department employees at Edmonton any annual vacation due when no work was required of their positions during a work stoppage by another union.

JOINT STATEMENT OF ISSUE:

In January of 1975, another union in the railway industry engaged in a work stoppage and as a consequence certain Express Department employees at Edmonton were notified that no work would be required on their positions. The employees affected by such notices had seniority rights to be exercised under Article 13 of Agreement 5.1 but some lost from one to four days of wages while exercising their seniority rights or due to failure to exercise their seniority rights. At the option of the employee, the Company paid vacation time to cover any days of lost wages.

The Brotherhood alleges that the Company violated Article 9.17 of the agreement when it did not automatically pay the employees vacation time due them on serving the notices. The Brotherhood contends that since vacation time due was not so paid the employees cannot be considered as having been laid off, rather they were following Company instructions to remain away from work. The Brotherhood further contends that under these circumstances, the employees should lose no time and that they should be paid all lost wages, or, where an employee elected to receive vacation pay to cover his days of lost wages, he should be credited with vacation entitlements so used.

The Company contends that these Express Department employees were not laid off since the exercise of seniority provisions in Article 13.3 had not been exhausted, and thus Article 9.17 could not have been violated since the provisions of that Article (9.17) only become operative when the employee has fully exercised seniority rights under Article 13.3 and is placed on the area laid-off list. The Company therefore denies that these employees have a proper claim to wages for time lost during this work stoppage in the exercise of their seniority or due to failure to exercise their seniority. This grievance was processed through the various steps of the grievance procedure and ultimately to arbitration.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(Sgd.) J. A. PELLETIER	**(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
D. Noyes – Agreements Analyst, Edmonton

And on behalf of the Brotherhood:

R. Henham – Regional Vice-President, Vancouver

H. Critchley	– Representative, Edmonton
N. Kowalchuk	– Local Chairman, Edmonton
W. Matthew	– Regional Vice President, Winnipeg
J. A. Pelletier	– National Vice President, Montreal
L. K. Abbott	– Regional Vice President, Moncton

AWARD OF THE ARBITRATOR

Article 9.17 of the collective agreement is as follows:

> **9.17** An employee who is laid off shall be paid for any vacation due him at the beginning of the current calendar year not previously taken, and, if not subsequently recalled to service during such year, shall, upon application, be allowed pay in lieu of any vacation due him at the beginning of the following calendar year.

The application of this article in similar circumstances was dealt with in **Case No. 540**. For the reasons given in that case, it is my view that article 9.17 does not require the payment out of vacation pay simply because an employee may be off work for a brief period when an assignment is abolished. It is true that the parties did not know precisely how long the work stoppage would last, but the procedures for exercising seniority had not been exhausted, and the employees had not been "laid off" within the meaning of article 9.17. It would, in my view, be inconsistent with the general provisions relating to vacation pay to consider this situation as one in which vacation pay should be paid "automatically".

In some cases it appears that some payment in respect of vacation pay was made, so that employees would not lose income for the period in question. Employees were not in fact on vacation at the time (subject to exceptional cases) and could be directed to return to their assignments. In these circumstances, payments on account of vacation pay would seem really to be advance payments of amounts which might be due when vacations were taken. There does not appear to be any basis in the collective agreement for crediting employees with vacation entitlements in these cases.

Finally, in the absence of a claim under a guarantee, there appears to be no basis for a claim that the employees should be paid in any event for days when there was no work in their positions. Their entitlement in such a case is to exercise seniority pursuant to article 13.3.

For the foregoing reasons, the grievance must be dismissed.

(Sgd.) J. F. W. WEATHERILL
ARBITRATOR