

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 546

Heard at Montreal, Tuesday, May 11th, 1976

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**CANADIAN BROTHERHOOD OF RAILWAY,  
TRANSPORT AND GENERAL WORKERS**

### **DISPUTE:**

Claims on behalf of three crewmen of the M.V. Marine Packer .

### **JOINT STATEMENT OF ISSUE:**

CN operates a public bus service in Newfoundland. The East Coast Marine and Ferry Service, a branch of CN, operates a marine service there. Ships' crewmen frequently make use of the bus service when travelling between port and home during periods of leave. Three crewmen; namely, Messrs. A. Frampton, A. Hynes and R. Stratton, of the M.V. Marine Packer were preparing to join their vessel at North Sydney at the conclusion of their leave on April 1, 1975. They planned to take the Expedo , an express bus, from Notre Dame Junction to Port aux Basques where they would board a ferry to take them to their assignment at North Sydney. However, the express bus was filled at Notre Dame Junction, and they took a local bus which arrived at Port aux Basques some fifteen minutes after the ferry to North Sydney had sailed. They consequently missed their assignment at North Sydney, and proceeded to St. John's where they joined their vessel some time later.

The three crewmen each claimed one day's lost wages, contending that they were not responsible for having missed their vessel. When the Company refused to pay the claims, the employees complained that they had been unjustly dealt with and submitted a grievance under Article 20.1 of Agreement 5.25.

### **FOR THE EMPLOYEES:**

**(SGD.) J. A. PELLETIER**  
**NATIONAL VICE-PRESIDENT**

### **FOR THE COMPANY:**

**(SGD.) S. T. COOKE**  
**ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS**

There appeared on behalf of the Company:

A. D. Andrew – System Labour Relations Officer, Montreal  
G. J. James – Labour Relations Officer, Moncton  
W. F. Wiseman – Supervisor, Personnel & Labour Relations, St. John's  
E. P. Ronayne – Operations Manager, Vessels, St. John's

And on behalf of the Brotherhood:

L. K. Abbott – Regional Vice President, Moncton  
J. A. Pelletier – National Vice President, Montreal  
B. Hould – Representative, Moncton

**AWARD OF THE ARBITRATOR**

It is clear that the grievors did not report for work on time. As a result their ship left and they missed their assignment. It appears that they were subsequently able to make up the loss of work, but I do not deal here with any question as to any averaging period. The only issue in this case is the claim made for one day's lost wages.

It is clear as well that the grievors did not deliberately miss their assignment, but made reasonable efforts to arrive on time; their missing the assignment was not a "fault" in the usual sense of the word. They would not, as many of the cases cited by the Union make clear, properly have been the subject of any disciplinary action in that regard. This is not, however, a disciplinary case. The grievors' loss of pay was due to their not being at work. There does not appear to be any guarantee provision as that term is usually used, entitlement to pay depending simply on attendance at work. It may be said that it was not the grievors' "fault" that they were not at work, even less, however, could it be said that it was the Company's fault. The question of "fault" really does not arise.

The grievors simply did not report for their assignment. The reasons for this failure were not such as to subject them to any discipline. But because of that failure, that is because they were not at work, the Company was not under any obligation to pay the grievors in respect of that particular time. Accordingly the grievance must be dismissed.

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