

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 659

Heard at Montreal, Tuesday, May 9th, 1978

Concerning

BRITISH COLUMBIA RAILWAY

and

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

EX PARTE

DISPUTE:

Refusal by the Company to pay Operator K.D. Flanagan for two days after being instructed to report for duty.

EMPLOYEE'S STATEMENT OF ISSUE:

Mr. Flanagan, a spare Operator was instructed to report for duty at 0001 October 3, 1977, at Lillooet, B.C. He reported for duty at 11:45 p.m. but was told the position he was to work was on days off.

The Union has requested payment for two days.

The Railway has refused payment.

FOR THE EMPLOYEE:

(SGD.) T. B. GOODWIN
SYSTEM GENERAL CHAIRMAN

There appeared on behalf of the Company:

T. Teichman – Manager Labour Relations, Vancouver
H. Collins – Supervisor, Labour Relations, Vancouver

And on behalf of the Brotherhood:

T. B. Goodwin – General Chairman, Edmonton

AWARD OF THE ARBITRATOR

The grievor was in fact instructed to report at Lillooet at 00:01 on October 3, 1977, and it appears that he did report at 11:45 p.m. on October 2. He was advised that his position was on days off. The grievor was given this advice by another operator, and seems not to have questioned it, but simply to have waited two days before reporting again.

The advice to report as above was given to the grievor by message No. G.H. 987, which indicated he had been granted an extension of leave of absence, gave instructions as to his travel to Lillooet and noted that travel time was not authorized. As far as his assignment is concerned, the message simply read "To begin duty 00:01, October 3rd, 1977".

This message was one of a series which had dealt with the grievor's assignment at Lillooet. In early messages, it had been clear that the grievor was to report to the Terminal Supervisor for shift assignment. The possible exercise of seniority rights by other employees made it impossible for the Company to make a precise assignment to the grievor until September 23, when he was instructed to report at 00:01 on September 30. Message G.H. 987 superseded that, granted an extension of leave, and indicated a new reporting date.

Whether or not the grievor did comply with the travel instructions set out in G.H. 987 is a separate matter. The fact is that he was given instructions to report, and that he did report. The Company did not communicate any changes in these instructions to the grievor.

The grievor, then, properly reported on October 3rd, and in my view was entitled to be paid. The lack of work appears to have been due to the exercise of seniority by another employee, but I do not think that affects the matter. The grievor did report in accordance with outstanding instructions.

He was, however, under an obligation to mitigate any loss of earnings which he may have suffered. Certainly he ought to have enquired of the Terminal Supervisor, and not simply accepted at face value the word of another operator. In fact, the Company found it necessary to work a junior operator overtime on October 4, so that there was work the grievor could have done, and which he ought to have found out about.

Accordingly, while it is my conclusion that the Company must be responsible for the grievor's loss of wages on October 3 he did, by his own failure to act responsibly, deprive himself of any further right of recovery. It is accordingly my award that the grievor be paid one day's regular wages.

(signed) J. F. W. WEATHERILL
ARBITRATOR