

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 698

Heard at Montreal, Tuesday, February 13, 1979

Concerning

CN MARINE CORPORATION

and

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

DISPUTE:

Claim on behalf of Senior Maintenance Engineer P.T. Gorham, M.V. Princess of Acadia for 4 hours pro-rata Shorthanded pay on August 14, 15, 16, 28, 29, 30, September 4, 5, 6 and 7, 1978.

JOINT STATEMENT OF ISSUE:

On the above mentioned dates the M.V. Princess of Acadia would normally sail with a Senior Maintenance Engineer and a Maintenance Engineer in addition to the Watchkeeping and Electrical Engineers. On each of these days the Maintenance Engineer was absent and Sr. Maintenance Engineer P.T. Gorham is claiming Shorthanded pay in accordance with Article 12.1 of Agreement 5.67.

The Company contends that the Sr. Maintenance Engineer performed no additional duties in the absence of the Maintenance Engineer; therefore, the employee has no entitlement to compensation under Article 12.1.

The claims have been processed through the various steps of the grievance procedure and ultimately to arbitration.

FOR THE EMPLOYEE:

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

FOR THE COMPANY:

(SGD.) R. J. TINGLEY
VICE-PRESIDENT AND GENERAL MANAGER

There appeared on behalf of the Company:

N. B. Price – Manager Labour Relations, Moncton
Captain P. Petrovitch – Senior Master M.V. Princess of Acadia Saint John
W. J. Nearing – Senior Labour Relations Assistant, Moncton

And on behalf of the Brotherhood:

L. K. Abbott – Regional Vice President, Moncton

AWARD OF THE ARBITRATOR

For the period of 1978 summer sailings, the complement of Engineer Officers for the vessel in question was four: two of these classified as "Maintenance" (the grievor, Senior Maintenance; Mr. Ashford, Maintenance), and two classified as "Watchkeeper" (Mr. Shannon, Senior Watchkeeper; Mr. Hamilton, Watchkeeper). There is a difference in function between the two groups, the Maintenance engineers being essentially day workers, and concerned with overall maintenance of equipment, the Watchkeepers being subject to shift work, and concerned essentially with the actual operation of the vessel. On the days in question the four persons referred to were scheduled to work the same hours, although Mr. Ashford appears to have had different days off.

On the days in question the vessel sailed with three, rather than four engineering officers. One of the Watchkeepers was on vacation, and was replaced by Mr. Ashford. The Watchkeeper duties, then, were fully performed, and the Watchkeepers did not perform additional work. Mr. Ashford was not replaced as a Maintenance engineer.

The grievor, Mr. Gorham, worked alone as Maintenance Engineer, although there would normally have been two engineers. It is the Union's position that Mr. Gorham performed not only his own regular duties, but also work normally assigned to Mr. Ashford. It is the Company's position that Mr. Gorham did not perform and was not requested to perform any duties that he would not normally perform during a tour of duty, and that the vessel did not sail shorthanded, since a determination was made that one maintenance engineer was adequate.

Article 12.1 of the collective agreement is as follows:

12.1 SHORTHANDED

In the case of the necessity of any vessel sailing without the full complement of Engineer Officers, the wages of the absentee shall be equally divided between the men who perform his duties, a substitute to be procured as early as available. Time worked performing such duties shall not be considered as excessive hours on duty.

There do not appear to be any manning provisions in the collective agreement. Whether or not a vessel sails "shorthanded" on any particular occasion is a matter of fact to be determined having regard to the general practice and to the circumstances of any particular voyage. The situation with respect to maintenance engineers, as has been noted, is different from that with respect to watchkeepers. For the purposes of the instant case, I will assume that the vessel sailed shorthanded with one rather than two maintenance engineers, but the matter is not free from doubt, and I make no finding on the point.

Assuming, then, that the vessel sailed shorthanded, Article 12.1 provides that "the wages of the absentee", that is, the wages Mr. Ashford would have earned working as a maintenance engineer (in fact, he made the same wages working as a watchkeeper), "shall be equally divided between the men who perform his duties". In this case, since only the grievor is alleged to have performed those duties, the wages would go entirely to Mr. Gorham if this clause applies, although he only claims one-half of them.

It has not been shown (and it is denied) that the grievor in fact performed duties he would not otherwise have performed had Mr. Ashford been present. Having regard to the general nature of the work, it seems quite possible that any individual maintenance engineer's work would not be affected by the presence or absence of other maintenance engineers. The same conclusion would probably not be reached in the case of watchkeepers, each of whom, it would seem, has duties which must be performed in the course of a voyage. If that is so, then the absence of a watchkeeper would inevitably mean more work for the others. That is not necessarily the case with respect to maintenance engineers.

In the **British Yukon Navigation Co. case**, (Dec. 16, 1976; MacIntyre), there was evidence that the remaining crew members in a department (four watchkeeping oilers and a pumpman) performed some at least of the work of a "day" oiler who had left the vessel. In any event, the collective agreement provided that where a ship runs shorthanded, "wages and weekly leave that would otherwise be paid to the members who are absent shall be paid to the crew members affected in the particular department". In allowing the grievance, the board stated that "we do not construe the Article as requiring the members claiming to prove that they did the actual work, so long as they have done what has been reasonably requested of them in addition to or in substitution for their usual duties". It is thus at least implicit in that award (with which, with respect, I agree), that the remaining crew members were "affected" by the absence of the day oiler.

In the case before me, the collective agreement has a somewhat more precise requirement: division of the absent employees wages "between the men who perform his duties". Having regard to the nature of a maintenance engineer's duties (insofar as they appear from the material before me) and to the circumstances of this case, I think it cannot be said that Mr. Gorham necessarily or in fact performed Mr. Ashford's duties. I am certainly in agreement with what is said in the **British Yukon Navigation case** as to the general effect of articles such as this, but I do not consider the clause before me requires payment to Mr. Gorham in the circumstances of this particular case.

The grievance must therefore be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR