CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 788

Heard at Montreal, Tuesday, November 11, 1980

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Claim for 10 days at straight time for Mr. D.M. McMahon, the senior laid off Operator, account violation of Article 7.1 of Collective Agreement 7.1.

JOINT STATEMENT OF ISSUE:

On March 31 the Company informed the Brotherhood that effective 0800 Tuesday April 1st, 1980 the position of Operator 1430 – 2330 at Charlottetown was no longer required. The position was not filled subsequent to this notice.

The Brotherhood claims that Article 7.1 requires the Company to give 10 days' notice when abolishing a position and claims that had the notice been given the Company would have filled the position with the senior laid off employee, Mr. McMahon.

The Company, while admitting that it violated Article 7.1, declined Mr. McMahon's claim on the basis that the position was vacant and the Company was not obliged to call Mr. McMahon to fill the vacant position.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD.) G. E. HLADY	(SGD.) S. T. COOKE
SYSTEM GENERAL CHAIRMAN	VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

R. A. Groome	– Labour Relations Assistant, Montreal
J. A. Fellows	– System Labour Relations Officer, Montreal
W. A. McLeish	– Labour Relations Assistant, Toronto
W. J. Behun	– Chief Train Dispatcher, MacMillan Yard, Toronto
W. J. Rupert	– System Rules Manager, Montreal

And on behalf of the Brotherhood:

G. E. Hlady	– System General Chairman, Barrie
F. E. Soucy	– General Chairman, General Secretary/Treasurer, Montreal
B. E. Woods	– District Chairman, Barrie

AWARD OF THE ARBITRATOR

Article 7 deals with "reduction in staff" and Article 7.1 is as follows:

> **7.1** As much advance notice as possible will be given of the intention to abolish positions. In no case will less than ten (10) days' notice be given of the intention to abolish permanent positions and in no case less than five (5) days' notice of the intention to abolish temporary positions which were filled by bulletin. However, in the event of a strike or work stoppage by employees in the railway industry a shorter notice may be given.

In the circumstances described in the joint statement, the Company did, in effect, "abolish" the position. The obligation imposed by Article 7.1 cannot be avoided by simply declaring that a position is no longer required, or that it is "blanked". Indeed, the Company quite properly admits that it was in violation of Article 7.1 in failing to give the notice required.

It would appear from the material before me that the Company may (consciously or not) having been "carrying" the previous incumbent of the job in question. When he gave notice, on March 27, that he would resign on March 31, the Company considered its position and decided not to replace him. That was a decision which the Company certainly had the right to make. There was, thereafter, no job of work to be done.

Generally speaking, that would mean that there was no "vacancy" to be filled. The effect of Article 7.1, however, may be (in a case such as this) to impose on the Company the requirement of filling a vacancy where it no longer requires the work to be performed. The purpose of this of course is to give employees a certain security of employment they would otherwise not have. Thus, if the previous incumbent had not decided to resign, but if the Company had nonetheless reviewed the matter on March 31 and decided that the position need no longer be filled, it would still have been bound to give ten days' notice (the exceptional circumstances referred to in Article 7.1 do not arise here), and to keep the position filled for that period of time.

Article 7.1 is not expressed as being for the benefit of those who may happen to be the incumbents of individual positions. It is a general obligation of the Company, and breach of it, while most obviously affecting incumbents, would, in some cases, affect those having a claim on the job involved. In the instant case, had the Company replaced the incumbent, the material before me indicates that the grievor would have been the one to replace him. His employment opportunity is affected by the abolition of the position. The opportunity would have been a real one had the position been continued. It was not open to the Company to discontinue it except on ten days' notice. Such notice was not given until March 31. The employment opportunity, therefore, ought to have continued until ten days after March 31. The loss of that opportunity is a direct loss to the grievor, and flows from a breach of the collective agreement by the Company. The appropriate remedy for such breach is payment of damages to the employee who has lost thereby. What was lost, it should be repeated, was an opportunity for employment, even if there was nothing required to be done in the position. The continuation of the employment is required by Article 7.1.

For the foregoing reasons, the grievance is allowed.

(signed) J. F. W. WEATHERILL
ARBITRATOR