

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 914

Heard at Montreal, Tuesday, March 9, 1982

Concerning

CANADIAN NATIONAL RAILWAYS

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Claim for Mr. B. Chartrand of Work Equipment, Transcona, Man., re Railway violation of Article 6, Clause 6.2 of Agreement 10.3.

EMPLOYEE STATEMENT OF ISSUE:

'B' Mechanic, B. Chartrand applied for and was successful to a mechanic 'B' position at The Pas, Manitoba.

Mr. Chartrand worked in his bid position in The Pas, Man. until April 14, 1980 at which time the Company moved him to Gillam, Manitoba to work in a position vacated by a permanent Field Maintainer until August 29, 1980.

The Company refuses to acknowledge violation of Article 6, Clause 6.2 of Agreement 10.3.

FOR THE EMPLOYEE:

(SGD.) A. F. CURRIE

SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

K. J. Knox	– Manager Labour Relations, Montreal
R. J. Wiebe	– Regional Labour Relations Officer, Winnipeg
R. Crotenko	– Supervisor Work Equipment, The Pas
T. D. Ferens	– System Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

A. F. Currie	– System Federation General Chairman, Winnipeg
F. L. Stoppler	– Vice-President, Ottawa

AWARD OF THE ARBITRATOR

Article 6.2 of the Collective Agreement is as follows:

6.2 Employees temporarily assigned to higher rated positions shall receive the higher rate while occupying such positions. Employees temporarily assigned to lower rated positions shall not have their rate reduced.

In the instant case, the grievor was assigned to perform certain tasks which might have been performed by a Field Maintainer. This occurred during a period of time when there was no Field Maintainer in the area, the incumbent having resigned, and the resultant vacancy (there was indeed a vacancy, as the Company required the work to be done) not yet having been filled. The material before me, however, does not establish that the grievor in fact performed the distinctive work of a Field Maintainer (although I agree with the Union that it is not a question of qualifications, but rather one of the tasks actually performed. Rather, the tasks he performed came within the scope of his own classification. The grievor did not really replace the Field Maintainer.

In any event, it is to be noted, first, that the grievance was filed some considerable time after the period for filing had expired. Further, even if the matter were arbitrable, payment could not be awarded in respect of a period more than sixty days prior to the filing of the grievance. Since the grievance was filed more than sixty days after the period in question, no award of payment could be made.

For all of the foregoing reasons the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR