

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 991

Heard at Montreal, Wednesday, October 13th, 1982

Concerning

**CN MARINE INC.**

and

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

### **DISPUTE:**

Mr. J. E. Blacquiere, Engineroom Assistant employed on the M.V. John Hamilton Gray in the PEI Ferry Service, when on his reporting for duty from leave of absence account sickness on October 5, 1981, was not permitted to displace a junior employee, working on a temporary vacancy on a vessel operating in the service while the M.V. John Hamilton Gray was in refit.

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

The Brotherhood claims compensation for one day's pay for loss of earning on October 5, 1981 for J. E. Blacquiere account of his not being permitted to displace to a position on a vessel operating in regular service while his regular vessel the John Hamilton Gray was in refit in St. John's, Newfoundland. The Brotherhood claims violation of Articles 4.2, 4.4, 4.16 and 4.19 of Agreement No. 5.61.

The Company has denied the claims.

### **FOR THE BROTHERHOOD:**

**(SGD.) W. C. VANCE**  
REGIONAL VICE-PRESIDENT

### **FOR THE COMPANY:**

**(SGD.) G. J. JAMES**  
DIRECTOR INDUSTRIAL, RELATIONS

There appeared on behalf of the Company:

N. B. Price – Manager Labour Relations, Moncton  
Capt. D. G. Graham – Marine Superintendent, Borden

And on behalf of the Brotherhood:

B. Hould – Representative, Moncton  
G. Sexton – Local Chairman, Borden

## AWARD OF THE ARBITRATOR

In this case, as in **Case No. 990**, the grievor was a member of the crew of the M. V. John Hamilton Gray. That vessel was to leave for refit on September 18, 1981. The grievor expressed a preference for an assignment on a vessel in regular service during that period, as he was entitled to do under Article 4.19. He did not, however, have sufficient seniority to obtain such an assignment. He remained a member of the crew of the John Hamilton Gray.

On September 15, 1981, the grievor went on sick leave, and was absent for that reason, and in receipt of benefits, up to and including October 5.

Upon his return to work, the grievor would be governed by, and have the benefit of Article 4.13 of the Collective Agreement, which is as follows:

**4.13** An employee returning after leave of absence, vacation or accumulated rest days shall resume his former position or status and/or, within 5 calendar days, exercise his seniority rights to any position or vacancy which he is qualified to fill which was bulletined within his seniority group during his absence.

This provision gives employees who have been absent the right to apply on positions bulletined during their absence. The grievor, in this grievance, alleges that he was entitled to displace a junior employee who was working on a temporary assignment on a vessel in regular service on October 6. The claim is only for one day, since the grievor did acquire a temporary assignment which was open to him under Article 4.1, on October 7.

The junior employee working on October 6 was on a temporary assignment. It would appear that it was not one which had been bulletined during the grievor's absence, so that he could not claim it pursuant to Article 4.13. It was a temporary vacancy filled under Article 4.1, and the grievor, who was not "unable to hold work", would not be entitled to displace the junior employee, as Article 4.2 makes clear. The grievor had already been afforded his rights under Article 4.19, prior to his vessel's departure for dry-dock. As is explained in **Case No. 990**, that article does not permit employees whose vessels are undergoing refit to displace junior employees at will throughout that period.

In the instant case, there was no violation of the Collective Agreement, and the grievance must be dismissed.

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