

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1026

Heard at Montreal, Tuesday, January 11, 1983

Concerning

CN MARINE INC.

and

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

DISPUTE:

Claim of Mr. R. Reddick for difference in wages between Assistant Steward and 3rd Cook on the M. V. "Sir Robert Bond".

JOINT STATEMENT OF ISSUE:

The M. V. "Marine Nautica" operating between North Sydney, N.S. and Port aux Basques, Nfld., was required to go to refit in St. John's in April 1982. The M. V. "Sir Robert Bond", a rail car ferry, was put in service to replace the "Marine Nautica". A number of positions and the incumbents were reassigned from the "Marine Nautica" to the "Sir Robert Bond" due to the increased number of passengers.

The Union claims that the positions required on the "Sir Robert Bond" should have been filled in accordance with articles 4.1 and 4.5 of Agreement 5.25 and that Mr. Reddick, who was regularly assigned as an

Assistant Steward on the "Sir Robert Bond" prior to the change in service, should have been awarded the position as 3rd Cook.

The Company maintains that the positions were transferred from the M. V. "Marine Nautica" to the M. V. "Sir Robert Bond" in accordance with article 42 of the collective Agreement and has denied the claim for payment to Mr. Reddick.

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
W. J. Nearing – Senior Labour Relations Asst., Moncton
Captain J. M. Taylor – Assistant Marine Superintendent, North Sydney

And on behalf of the Brotherhood:

W. C. Vance – Regional Vice-President, Moncton
Jack Parsons – Local Chairman, North Sydney

AWARD OF THE ARBITRATOR

The grievor held a regular assignment as an Assistant Steward on the "Sir Robert Bond". When that vessel required increased staff, transfers were made to positions thereon, as indicated in the Joint Statement.

These transfers were made to fill "vacancies" within the meaning of article 4.1 of the Collective Agreement. That article is as follows:

ARTICLE 4

BULLETINING AND FILLING POSITIONS

4.1 Applicable to Agreements 5.25, 5.26 and 5.48 only:

Vacancies or new positions, which are expected to be of 60 calendar days' duration or less, and vacancies of longer duration pending filling by bulletin appointee, shall be filled, as required, in the following order:

- (a) by the senior qualified employee working in the seniority group who makes application therefore within 5 calendar days of its occurrence;
- (b) by the senior qualified employee protecting spare and relief within the seniority group who is immediately available;
- (c) by the junior qualified laid-off employee within the seniority group;
- (d) by the qualified person standing first on the preferential list who is immediately available;
- (e) by other qualified applicants from within Newfoundland Vessel Agreements according to the order which would apply on the preferential list;
- (f) by other qualified applicants from other CN Marine Vessel Agreements in order of best seniority date in such Agreements.

In the instant case there was a vacancy expected to be of 60 days' duration or less.

In my view the Union is correct in asserting that article 4.1 applies in the circumstances. Article 4.2, which deals with transfers, sets out certain provisions with respect to payment to employees who are transferred. It does not create a right in the Company to transfer employees which would override their rights to bid on positions, or to exercise seniority. There is no inconsistency between article 4 and article 42. The exercise of rights under article 4 may or may not lead to some entitlement under article 42.

In the instant case there was a vacancy of the sort contemplated by article 4.1. It ought to have been filled in compliance with that article. That article, however, does not give any prior right to employees on the vessel on which the vacancy occurs. It does give a prior right to employees in the seniority group. The material before me does not establish that the grievor was entitled, in the circumstances of this case, to the exercise of any such right; indeed, he appears to have had less seniority (apparently within the seniority group) than the employee who was transferred.

Thus, while article 4.1 applied, it has not been shown that there was any violation of its provisions, or that the grievor was deprived of any entitlement he would have thereunder. Of course bulletined positions are with respect to particular vessels (article 4.5) but the right of application is not so limited.

It has not been shown that the grievor has suffered any loss, and the grievance is therefore dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR