

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1027

Heard at Montreal, Tuesday, January 11, 1983

Concerning

CN MARINE INC.

and

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

DISPUTE:

Claim of nine Assistant Stewards on the M.V. "Marine Nautica" for four days' pay account of being removed from their positions.

JOINT STATEMENT OF ISSUE:

The M. V. "Marine Nautica" operating between North Sydney and Port aux Basques was withdrawn from service on 11 March 1982 and was required to go to Halifax for repair to rudder.

At the crew change on 15 March 1982, the "Nautica" being in refit did not require the usual number of Assistant Stewards. The surplus positions were transferred to the "Marine Atlantica" to handle additional passenger traffic and to the "Ambrose Shea" to assist in preparing the vessel for service should an additional vessel be required.

The Union claims that the nine Assistant Stewards transferred should have been given four days' notice of job abolishment from the M. V. "Marine Nautica".

The Company maintains that the positions were not abolished but were transferred to other vessels in accordance with Article 42 and the employees lost no time as a result of the transfer and have denied the claim.

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

In my view, what occurred here was an instance of "staff reduction" within the meaning of Article 5.11. The employees' positions (which are bulletined in respect of particular vessels), were abolished. They were, therefore, entitled to four days' notice thereof pursuant to Article 5.11, which reads as follows:

5.11 In instances of staff reduction, four working days' advance notice will be given to regularly assigned employees whose positions are to be abolished, except in the event of a strike or work stoppage by employees in the railway industry, in which case a shorter notice may be given. The Local Chairman will be supplied with a copy of any n notice.

The employees concerned would then be entitled to exercise seniority rights. No claim for compensation is made on their behalf, however, since they appear to have suffered no loss. The Company transferred them to other jobs, purporting to act pursuant to Article 42 of the Collective AGREement. Article 42, however, does not establish a right to transfer, nor does it detract from employees' rights under other provisions of the Collectiver Agreement. Rather, it deals with rights and obligations which arise once a transfer has been decided on.

The employees who were, as I have found, entitled to notice do not appear to have lost earnings as a result of any failure to give the notice required. Accordingly, the award in this matter is simply a declaration that the Company ought, in the circumstances, to have given a notice pursuant to Article 5.11 of the Collective Agreement.

(signed) J. F. W. WEATHERILL
ARBITRATOR