

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1047

Heard at Montreal, Tuesday, March 8th, 1983

Concerning

CN MARINE

and

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

DISPUTE:

Claim of Mr. H. B. MacDonald for four days' pay for travelling time plus \$28.00 for meals.

JOINT STATEMENT OF ISSUE:

Mr. H. B. MacDonald, a spare and relief employee in the Newfoundland Services, was employed as an Engineerroom Assistant on the M.V. "Sir Robert Bond" from April 24 to April 30, 1982. On April 27, 1982 the Master of the vessel posted a notice to all crew members that the next change for the shift would be May 15, 1982, and crew members should report back to the vessel on that date unless advised otherwise.

Mr. MacDonald reported to the ship on May 15th and was advised by the Chief Engineer that he was not required as there was already a full complement for the engineerroom.

The Union has claimed violation of Articles 30.1, 30.3, 41.1 and 41.5 of Agreement 5.25 and requested payment of four days' travelling time and \$28.00 for meals on behalf of Mr. MacDonald.

The Company has declined the claim for travelling time and expenses but in an effort to resolve the grievance without prejudice have arranged payment to Mr. MacDonald of one (1) day for the day he reported to the vessel.

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
K. T. Osmond – Supervisor Crew Assignments, St. John's

And on behalf of the Brotherhood:

W. C. Vance – Regional Vice-President, Moncton

AWARD OF THE ARBITRATOR

The grievor is a spare and relief employee and it was in that capacity that he was employed from April 24 to April 30. That employment was for less than a "shift", shifts changing at roughly half-monthly intervals. The grievor had no particular reason to think that his spare and relief assignment would be repeated after the end of the shift to which he had been called to replace an employee absent due to sickness.

Thus, when a notice relating to the dates for the regular shift change was posted on April 27, advising employees to report back on May 15, that notice, although addressed to "all crew members" was, I think quite obviously, directed to those having regular assignments, and was not a notice binding on the grievor, or giving him any entitlement to work. For him subsequently to report to work pursuant to that notice was to give its terms a literal and unnatural reading which was not justified in the circumstances.

It was argued that by Article 41.5, failure to report would be taken as a resignation. That Article applies, however, only to those required to report. The notice in question did not, I find, require the grievor to report, and he was under no obligation to do so. Any disciplinary action taken against him for failure to report pursuant to the notice given here would have been quite unjustified.

For the foregoing reasons, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR