CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1048

Heard at Montreal, Tuesday, March 8th, 1983

Concerning

CN MARINE INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT & GENERAL WORKERS

DISPUTE:

Claim of Purser R. K. MacLeod for allowance of 120 hours' vacation in December 1982, account violation of Article 7.21 of Agreement 5.26.

JOINT STATEMENT OF ISSUE:

In August 1982 Mr. MacLeod requested some time off as vacation. The time off was granted and Mr. MacLeod was advised to take the balance of the month of August off and was paid vacation pay for the month.

The Brotherhood claims that Mr. MacLeod had applied for his vacation to be taken in December 1982 in accordance with Article 7.20 of Agreement 5.26, and should not have been required to take the vacation in August, since he was not so advised in February in accordance with Article 7.21.

The Company acknowledges its failure to advise Mr. MacLeod in February of his vacation dates, but maintains that it was unable to schedule vacation in December as requested, and that it was appropriate to require that it be taken in August.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) W. C. VANCE	(SGD.) G. J. JAMES
REGIONAL VICE-PRESIDENT	DIRECTOR INDUSTRIAL RELATIONS

There appeared on behalf of the Company:

N. B. Price	– Manager Labour Relations, CN Marine, Moncton
K. T. Osmond	– Supervisor Crew Assignments, CN Marine, St. John's, Nfld.

And on behalf of the Brotherhood:

W. C. Vance	– Regional Vice-President, CBRT&GW, Moncton

AWARD OF THE ARBITRATOR

The grievor made an application for vacation dates of his choice, pursuant to Article 7.21 of the Collective Agreement. That Article is as follows:

> **7.21** Applications filed prior to February 1st, insofar as it is practicable to do so, will be allotted vacation during the summer season, in order of seniority of applicants, and unless otherwise authorized by the officer in charge the vacation period shall be continuous. Applicants will be advised in February of dates allotted them and unless otherwise mutually agreed employees must take their vacation at the time allotted.

Reference may also be made to Article 7.22, which is as follows:

> **7.22** Unless mutually agreed, employees who do not apply for vacation prior to February 1st, shall be required to take their vacation at a time to be prescribed by the Company.

While the grievor sought a December vacation rather than one in the summer, he made a timely request. He did not get a timely response. That does not mean that the grievor would be entitled to the vacation dates requested, simply by virtue of the Company's failure to respond to his request in accordance with the Collective Agreement. Indeed it seems that the dates sought by the grievor had been requested by employees having greater seniority, and that the requirements of the service would not allow the grievor to take his vacation at the time he sought.

Since the grievor had applied before February 1, however, his case was not one coming within Article 7.22, and I do not think the Company could simply assign him a vacation time as though he had not applied at all. In the instant case, not only did the Company assign a vacation time to the grievor, but it did so on virtually no notice, not even the two weeks' notice called for by the Canada Labour Standards Regulations (although I make no determination as to their application in this case).

The grievor, who had requested one day's leave for a medical appointment, took certain "banked" vacation time at the same time. This was a reasonable accommodation, given the nature of the grievor's work and the Company's operations. When, having made that accommodation, the grievor sought to return to duty part way through his 15-day "shift" (as he had expected to do), he was then advised that he was required to take the following ten days (when he had expected to work), as vacation. Even if the Company were entitled, after considering employees' requests, to prescribe the periods of vacation to be taken, it could not, except in cases coming under Article 7.22 (and even there an issue might arise as to sufficiency of notice), prescribe a "vacation" period without at least consultation with the employee.

For the foregoing reasons it is my conclusion that what was done was contrary to Article 7 of the Collective Agreement, and that the grievance must succeed. The grievor is to be allowed 120 hours of vacation credit.

(sgd.) J. F. W. WEATHERILL
ARBITRATOR.