

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1066

Heard at Montreal, Wednesday, April 13th, 1983

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

The Brotherhood claims the Company violated the provisions of article 12.15 when, pursuant to article 12.13, the Company held Mr. W. Chopyk temporarily on his position. The Brotherhood claims that, in not releasing Mr. W. Chopyk within the three working days provided for in article 12.15, Mr. Chopyk's subsequent displacement of Mr. L. Chambers was a violation of article 12.15. The Company denies there was a violation of article 12.15.

JOINT STATEMENT OF ISSUE:

During Mr. Chopyk's vacation, a position of Engineering Clerk was bulletined and awarded to Mr. L. Chambers. Upon his return from vacation, Mr. Chopyk, pursuant to article 12.15, indicated his intention to exercise his seniority to this position bulletined during his absence. The Company, pursuant to article 12.13, held Mr. Chopyk on his original assignment until he could be released to assume the bulletined position awarded to Mr. L. Chambers. The Brotherhood alleged that, since Mr. Chopyk did not physically assume the position awarded to Mr. L. Chambers within three working days of Mr. Chopyk's return from vacation, his subsequent assumption of the position was a violation of article 12.15.

The Company denied the Brotherhood's claim.

FOR THE BROTHERHOOD:

(SGD.) TOM MCGRATH
NATIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) J. R. GILMAN
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. W. Coughlin – System Labour Relations Officer, Montreal
B. Noble – Manager Labour Relations, Montreal

And on behalf of the Brotherhood:

Wm. H. Matthew – Regional Vice-President, Winnipeg
Tom McGrath – National Vice-President, Ottawa

AWARD OF THE ARBITRATOR

Article 12.15 of the collective agreement provides as follows:

12.15 An employee, returning from vacation or leave of absence (except as provided in article 11.10), shall resume his former position or within three working days of his return exercise his seniority to any position bulletined in accordance with articles 12.1, 12.4 or 12.6 during his absence. When displacing, in accordance with article 12.6, employees will only be permitted to displace at their station or terminal. Employees thereby displaced will return to their former assignments, or may exercise their seniority rights to any position awarded under articles 12.1, 12.4 and 12.6 to a junior employee during the period between their appointment and subsequent displacement.

Mr. Chopyk upon his return from vacation, exercised his seniority, as this article entitled him to do, to a position which had been bulletined while he was absent on vacation. By virtue of his qualifications and seniority, he was awarded the job. The Union's contention is that the right, accorded by article 12.15 to "exercise his seniority" meant a right to go at once to the job in question. The Company's position, in effect, is that article 12.15 gives an employee returning from vacation the same rights to apply for bulletined positions that he could have exercised had he not been absent. The Union's position it may be noted, would put the vacationing employee in a better position than the employee remaining at work, with respect to bulletined jobs.

That this anomalous result is not intended by the collective agreement is clear, I think, when article 12.15 is read together with article 12.13. Article 12.13 is as follows:

12.13 Employees shall be permitted to assume positions to which appointed within 21 calendar days of the date of bulletin making the appointment and must assume such position with 45 calendar days of such appointment or on completion of their present, or subsequent, temporary assignments.

That article allows the Company to retain an employee in his former position for a certain time (perhaps for the purpose of training a successor), and also imposes a time limit within which the successful applicant must move to the bulletined position. The instant grievance does not involve a claim by Mr. Chopyk that he was not permitted to assume the position within 21 days. It may be noted, however, that he seems to have assumed the position on the last possible day, under article 12.13. In any event, the fact that the Company held Mr. Chopyk on his job within the limits set out in article 12.13 did not deprive Mr. Chopyk of his rights exercised under article 12.15. That article gives a special right to vacationing employees with respect to bulletins issued during their absence. It does not require the transfer of the employee within the three-day period referred to.

There was no violation of the collective agreement in the circumstances, and the grievance must therefore be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR