

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1208

Heard at Montreal, Tuesday, March 6, 1984

Concerning

**CN MARINE INC.**

and

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

### **DISPUTE:**

That the Company should have allowed Mr. D. F. Jay to exercise his seniority to another position when the vessel on which he was working, the M. V. Holiday Island, went to dry-dock. The Union is claiming payment for any loss of earnings and expenses incurred by Mr. Jay as a result of having to accompany the vessel to refit.

### **JOINT STATEMENT OF ISSUE:**

The Brotherhood contends that when the M. V. Holiday Island proceeded to dry-dock for scheduled refit, the resultant change in work schedule for watchkeeping positions effectively abolished such positions under the terms of Article 4.5, and therefore Mr. Jay should have been allowed to exercise his seniority to another position. They further contend he suffered a loss of earnings and incurred personal expenses as a result and are claiming compensation.

The Company declined the grievance, maintaining that Article 4.5 of the collective agreement only addresses the matter of what will be shown on bulletins and that the more specific terms of Article 30 would apply in determining the hours of work.

### **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  
Capt. D. G. Graham – Marine Superintendent, Borden  
D. Randall – Superintendent Marine. Engineering, Borden, PEI

And on behalf of the Brotherhood:

G. Murray – Representative, Moncton  
W. C. Vance – Regional Vice-President, Moncton

## **AWARD OF THE ARBITRATOR**

The issue in this case is whether the grievor's position was abolished during the period of the refitting of the Company vessel "M.V. Holiday Island" to which he was assigned while dry-docked at Sorel, P.Q. At all material times the grievor held the position of Senior Engineer which is a "watchkeeping" position. The grievor claims that by operation of Article 4.5 of the collective agreement his position during the refit period, owing to the change in his scheduled hours, was abolished. Accordingly, he should have been given the opportunity to bid on the senior engineman's position on another vessel, "M.V. Vacationland". Article 4.5 reads as follows:

**4.5** All bulletins will show classification, vessel, essential qualifications, rate of pay, duration if temporary and assigned rest days and hours of service (except for watchkeeping positions for which rest days and hours of service shall be as per watch bill).

The Company does not dispute the notion that the grievor's scheduled hours were changed during the period in which his normal vessel was being refitted. Nonetheless, the Company relied upon two exemptions provided under the collective agreement that allowed it to continue to retain the grievor at his regular assignment on the "M.V. Holiday Island". The relevant provisions read as follows:

**30.1** The principle of the 40-hour week is recognized and the hours of assignment shall not be changed without 36 hours' notice of the employee(s) affected. The establishment of a 40-hour week does not constitute a guarantee of work.

**30.2** When the starting time of a non-watchkeeping position is change 2 hours or more, such position shall be declared vacant and rebulletined, except that this shall not apply when change of hours is to accommodate refit or lay-up for repair.

Notwithstanding the changes in scheduling the grievor's position would be unaffected by the refit. Firstly, Article 30.2 prescribes that no vacancy can be declared with respect to a "watchkeeping" position, due to a change in scheduling; secondly for the same reason, no vacancy arises when the change in scheduling is occasioned by a refit. Accordingly Article 4.5 would have no bearing on the alleged abolition of the grievor's position arising out of the grievor's changed hours during the refit period.

As a result the grievor would have no status to bid for another position owing to a vacancy in his own position. The grievance is denied.

**(signed) DAVID H. KATES**  
**ARBITRATOR**