

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1441

Heard at Montreal, Tuesday, December 10, 1985

Concerning

CP EXPRESS AND TRANSPORT LTD.

and

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

DISPUTE:

Concerns the payment of three days (24 hours) to employee C. B. O'Hara, Edmonton, Alberta, who was placed on layoff and then was not called into work for specific dates while this work was provided to junior employee E. Lester and others.

JOINT STATEMENT OF ISSUE:

The Company's position is that as the grievor had his phone disconnected the Company was unable to contact him.

The Brotherhood's position is that this employee during all periods of layoff phoned in for work even though it is incumbent on the Company to contact the employee in seniority order at the times work is available, this employee phoned Supervisor D. Wilkie, and was told that no work was available while at the same time work was provided to junior employee E. Lester and other junior employees.

The relief requested is for the payment of three days (24 hours) in the name of C. B. O'Hara for dates of January 17, 18, and 24, 1985.

FOR THE BROTHERHOOD:

(SGD.) J. J. BOYCE
SYSTEM GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) N. W. FOSBERY
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

N. W. Fosbery – Director Labour Relations, Willowdale

And on behalf of the Brotherhood:

J. J. Boyce – General Chairman, Toronto
G. Moore – Vice-General Chairman, Moose Jaw
M. Flynn – Vice-General Chairman, Vancouver

AWARD OF THE ARBITRATOR

There is no dispute in this case that at the times alleged by the grievor the Company employed less senior employees while the grievor was on lay off status.

The only issue that I am asked to resolve is whether the grievor was "available" to accept the assignments in question at the material times they arose. If so, and the Company is found delinquent in its efforts to make contact with the grievor for purposes of assigning him a work opportunity then that would constitute a violation of article 7.3.10 of the collective agreement.

The uncontradicted evidence demonstrated that, notwithstanding the grievor's intermittent attempts to report his whereabouts to the Company, no work was available when such telephone calls were made. And the reason the grievor reported his whereabouts, as aforesaid, was because he was in the process of moving residences. Accordingly, he disconnected the telephone at his last known address thereby complicating any effort that might be made by the Company in order to reach him if and when a work opportunity did arise. In other words, I am satisfied that the grievor's difficulty rested more in his not being "available" for a work assignment than the Company's failure to have an assignment available for him to accept.

Surely, in order for the grievor to properly invoke his entitlements under article 7.3.10 he must ensure that the Company has ready access to him for purposes of communicating a work opportunity. If the grievor, because of personal exigencies, cannot ensure such access he cannot later be heard to complain that he was denied an opportunity to work.

Insofar as the Company's reliance on the telephone to contact the grievor is concerned, I am satisfied that, although article 7.3.10 makes reference "to register letter or hand" when an attempt is made to notify an employee of a work opportunity, the accepted practice is for the Company to use the telephone for that purpose. Indeed, the grievor used the telephone to advise the Company of his potential availability.

For all the foregoing reasons the grievance is denied.

(signed) DAVID H. KATES
ARBITRATOR