CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1447

Heard at Montreal, Wednesday, December 11, 1985

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claims on behalf of Mr. J.P. Dumontier for seven days pay and Messrs. S. Fiset and F. Simard for fourteen days pay each.

JOINT STATEMENT OF ISSUE:

The grievors who were on lay-off were recalled to work in accordance with article 4.3 of agreement 10.9. The work for which the grievors were recalled was expected to last in excess of forty-five calendar days but due to unforeseen circumstances Mr. Dumontier was laid off after 36 calendar days while Messrs. Fiset and Simard were laid off after 25 calendar days.

The Brotherhood contends that because the employees were recalled pursuant to article 4.3 they were guaranteed employment for a minimum period of 45 calendar days.

The Company disagrees with the Union's contention.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) PAUL A. LEGROS	(SGD.) D. C. FRALEIGH
SYSTEM FEDERATION GENERAL CHAIRMAN	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. Russell	– System Labour Relations Officer, Montreal
T. D. Ferens	– Manager Labour Relations, Montreal

And on behalf of the Brotherhood:

P. A. Legros	– System Federation General Chairman, Ottawa
R. Y. Gaudreau	– Vice-President, Ottawa
J. J. Roach	– General Chairman, Moncton
A. Toupin	– General Chairman, Lasalle

AWARD OF THE ARBITRATOR

Pursuant to article 4.3 of agreement 10.9, the grievors were recalled from lay off status to work on a Company project that was intended to last forty-five days or more. Due to financial exigencies the Company was compelled to cut short the project prior to the expiry of the forty-five day work period. The grievors, accordingly, were returned to lay off status.

The Trade Union argued that there is contained in article 4.3 of agreement 10.9 an implied guarantee of 45 days' pay, whether worked or not, because if the grievors should have refused the work opportunity they stood "to lose their seniority". Or, more succinctly, the employer could have terminated the grievors had they rejected the Company's offer of employment.

This argument was dealt with squarely by Arbitrator Weatherill in **CROA 301** as follows:

> It is understandable that, where an employee is bound to accept recall, he would expect that that amount of work which made his recall mandatory would in fact be available. The collective agreement, however, does not require the Company to guarantee that amount of work. Guaranteed employment is the sort of matter which requires to be set out in express language to that effect and that is simply not to be found in the collective agreement before me. The determination of the length of a vacancy must be made *bona fide* on the basis of the situation as it exists at the time the vacancy is to be filled, where that is done, there is no obligation, as the collective agreement now stands, to retain employees at work if in fact, as matters turn out, the anticipated work is not available. (Emphasis added)

Nothing contained in the Trade Union's brief has convinced me that the aforesaid decision was erroneous or should otherwise be rejected for cause.

Accordingly, because I can discern no implied guarantee contained in the collective agreement in the circumstances described herein the grievors' grievance must be denied.

(signed) DAVID H. KATES
ARBITRATOR