CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 21

Heard at Montreal, Monday, January 10th, 1966

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

DISPUTE:

The Union claims that the Company violated the second Note of Article 25 (a) of the Agreement by improperly calculating the cumulative days of service of Mr. J.R. Sullivan.

JOINT STATEMENT OF ISSUE:

Mr. J.R. Sullivan entered the service of the Company on August 3, 1948 and established rights as a Relief Dispatcher and, thereby, seniority as a Train Dispatcher on June 13, 1956. During the years 1956, 1957, 1958, 1959 and 1960 he was employed as an Operator and accumulated only five days' service as a Relief Dispatcher. On May 10, 1961, the Company bulletined a vacancy in a position scheduled to work four days per week as a Dispatcher and one day per week as an Operator. Mr. Sullivan was the successful applicant for this position and commenced work on it on May 27, 1961. In order to credit Mr. Sullivan with the 254 days' cumulative service, required by the Agreement for advancement to the next higher rate of pay, the Company counted the four days each week that he worked as a Dispatcher but not the one day each week that he worked as an Operator. On August 6, 1962, according to the Company's records, Mr. Sullivan had accumulated 254 days as a Dispatcher and he was advanced the next higher rate. The Union protested the Company's method of crediting time and claimed that the time spent as an Operator, as well as the time spent as a Dispatcher, i.e., five days per week, should be allowed in computing the 254 days cumulative service. Using the Union's method of calculation, Mr. Sullivan would have been entitled to his graded rate increase on May 6, 1962. The Union has processed this dispute as a grievance through the various steps of the Grievance Procedure.

FOR THE EMPLOYEES:

(SGD.) F. M. SHEAHAN
SYSTEM GENERAL CHAIRMAN

(SGD.) J. E. LEBLANC
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) T. A. JOHNSTONE
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

W. S. Hodges	– Labour Relations Assistant, Montreal
N. A. McLean	– Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

F. M. Sheahan	– System General Chairman, Montreal
J. E LeBlanc	– General Chairman, Montreal
G. E. Hlady	– General Secretary & Treasurer, Montreal
F. E. Easterbrook	– Vice-President, Montreal
J. A. Brunet	– District Chairman, Montreal

AWARD OF THE ARBITRATOR

There is no dispute as to the facts set forth in the Statement of Issue. The problem is one of interpretation of the Note to Article 25 (a), reading:

> Telegraphers on graded rates shall be paid the next higher rate after having actually performed 254 days cumulative service in the respective or superior classification.

From 1947 to 1955 that provision read:

> Telegraphers on graded rates shall be paid the next higher rate after having performed three hundred and six (306) days cumulative service in the classification.

It was Mr. Sheahan's contention that the addition of the word "actually" was to further strengthen the wording of this Article to prevent claims being submitted based on Relief Dispatchers accumulating seniority as such and to ensure that the wording was specific that the work had to be performed in the classification of trick dispatcher.

It was Mr. Sheahan's further contention that addition of the words "respective or superior" was to ensure that an employee holding relief rights as a traffic supervisor or train movement director would actually accumulate credit for graded rates in such classification while actually performing work in the train dispatchers classification.

It was Mr. Sheahan's belief that management, in declining Mr. Sullivan's claim erred by confusing "duties" with "classification".

Mr. Sheahan relied on a ruling by the **Canadian Railway Board of Adjustment in Case No. 523** on May 11, 1943. In that matter the claim was under a provision reading:

> A dispatcher after serving three hundred and thirteen cumulative days as relief or regular dispatcher, or both, will receive the rate specified above for second year dispatcher.

Without giving reasons the Board of Adjustment granted the claim.

Mr. Hodges contended, of course, that this ruling was made under a provision quite different to that under consideration. In another matter argued before the Arbitrator at this session it was contended the former Board of Adjustment was not required to give reasons in granting or dismissing a claim. It was therefore under no obligation to analyse, as must this Arbitrator, the applicable written provision that had been executed by the parties.

For the Company Mr. Hodges claimed inclusion of the word "actually" in this provision was for the purpose of requiring that the ordinary definition of that word, namely, in fact, be fulfilled, and that 254 days should be spent performing the duties, not of an operator, but of a dispatcher, the superior classification.

Mr. Hodges further claimed the purpose of graded rates is to reward proficiency gained through experience. He suggested it was obvious that a man working only four days per week on an assignment does not gain the same experience as a man working five days per week on the same assignment.

It is my conclusion that to succeed in such a claim the provision in question should not contain the word "actually". I am satisfied its ordinary meaning cannot be stretched to cover what was proposed on behalf of this claimant.

For these reasons this claim is disallowed.

(signed) J. A. HANRAHAN
ARBITRATOR