CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 244

Heard at Montreal, Wednesday, October 14th, 1970

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT & GENERAL WORKERS

EX PARTE

DISPUTE:

Concerning the application of a local agreement regarding the allotment of vacation dates to employees in the express shed establishment at Toronto, Ontario.

EMPLOYEES' STATEMENT OF ISSUE:

As defined in Article 1.11 of Agreement 5.1, the words "locally arranged" mean an agreement between the local supervisory officer of the Company and the Local Chairman of the Brotherhood.

In July 1966, in accordance with Article 9.18 of the Agreement it was agreed locally that every employee would be allowed to take his vacation in the months of June, July, August and September if they so desire, with the exception of employees whose starting date was after February 10 of the preceding year. It was further agreed that vacations would be allocated under the block system. This meant that vacation dates would be awarded by seniority of applicants within each group in the shed establishment.

Effective that year and each year thereafter, employees entitled to vacations were allocated vacation dates in accordance with the provisions of the local agreement.

This year, the Company decided not to schedule vacation dates solely based on the seniority of the applicants and threw in the factor of classification as a further qualification for vacation entitlement. This was done without an agreement with the Local Chairman.

The Brotherhood protested the action of the Company and insisted that vacation dates be allocated as in previous years.

The Company dismissed the grievance on the basis that the collective agreement had not been violated.

FOR THE EMPLOYEES:

(SGD.) J. A. PELLETIER
EXECUTIVE VICE-PRESIDENT

There appeared oh behalf of the Company:

D. O. McGrath	– System Labour Relations Officer, Montreal
M. A. Matheson	– Labour Relations Assistant, Montreal
E. Donnelly	– Labour Relations Assistant, Toronto
G. B. McKeown	– General Supervisor Operations, Toronto
W. Wilson	– Terminal Assistant, Toronto

W. J. Kerr – Staff Supervisor, Toronto

And on behalf of the Brotherhood:

J. A. Pelletier – Executive Vice-President, Montreal
J. D. Hunter – Regional Vice-President, Toronto
T. N. Stol – Local Chairman, Toronto

AWARD OF THE ARBITRATOR

In general, the times at which vacation may be taken are governed by article 9.14, which is as follows:

> **9.14** Applications filed prior to February 1st, in so far as is practicable to do so, will be allotted vacation during the summer season, in order of seniority of applicants, and unless otherwise authorized by the officer in charge, the vacation period shall be continuous. Applicants will be advised in February of the dates allotted them, and unless otherwise mutually agreed, employees must take their vacation at the time allotted.

This provision, it may be seen, says nothing as to the number of employees who may be absent on vacation at any one time. It would seem from the article that the company could properly determine, at least in the first instance, how many employees could be away at any one time, and in view of the reference of practicability in the agreement, it would seem clear that this could be done on a regional, local, shift, group, or classification basis. It would be a question to be determined in the circumstances of any particular case whether the company properly treated any grouping of employees as separate for vacation purposes. This matter is, however, subject to mutual agreement.

There had been an agreement between the parties outlining the provisions which would apply in allocating vacations in the Toronto Express Shed Operations. This is the agreement of July, 1966, under which vacations were to be allotted under a "block system" which meant that vacation dates would be awarded by seniority of applicants within each group in the shed establishment. In view of the contemplation of such arrangements by the collective agreement it could, in my view, be a violation of the collective agreement for the company not to follow such arrangements, where they are in effect.

In 1967 the express shed operation at Toronto was closed, and many of the employees transferred to a new express-freight terminal at Maple, where an integrated operation, with more employees, was carried on. It is doubtful whether the 1966 agreement relating to vacation times would have survived this move in any event, but the parties themselves agreed, in 1968, to assign vacations in order of seniority on a shift basis. This agreement would appear to stand on the same basis as that of 1966, and in effect to supercede it.

In 1969, a new agreement was made dealing with vacation arrangements for that year. Under that agreement, employees were allocated vacation dates in order of seniority, it being agreed as to the number of employees on each shift who could be away on vacation at any one time. The company considered that there were many problems created as a result of this system, since it led, in some instances, to a great many persons in certain key jobs being away at the same time. The 1969 agreement, which was signed by representatives of both parties, was expressly in effect only for the year 1969.

In 1970, the company was unable to obtain the agreement of the union to an arrangement respecting vacation times. The effect of the expiry of the 1969 agreement in accordance with its own terms was to leave the parties with no mutual arrangement altering the application of Article 9.14, or any other provisions of the collective agreement. The expiry of the 1969 agreement did not somehow revive the 1968 agreement, let along that of 1966. Those agreements each had effect during their times, and it would have been my view, on a grievance brought with respect to those times, that the company was bound by such agreement and that a violation thereof could be properly redressed through the grievance procedure. As far as 1970 is concerned, however, there was no such agreement in effect, and this grievance falls to be determined on the unqualified words of the collective agreement.

The application of a provision identical to article 9.14 was dealt with in **Case No. 175**, which involved a different trade union than that appearing here. The question which arises on the facts of this case is really whether the company properly treated persons coming within certain classifications as constituting separate groups for vacation purposes. In my view, the practical considerations set forth at the hearing lead to the conclusion that this was proper. For this reason, the grievance must be dismissed.

The company objected to the proceeding on grounds that it was not arbitrable, and I will deal briefly with these. It was said that the grievance did not allege any violation of the collective agreement. It is true that the grievance relied on a breach of the agreement of 1966, which is not the collective agreement. Had that agreement remained in effect however, I would have held that there had been a breach of the collective agreement, because the 1966 agreement was of a sort contemplated by the collective agreement, and was simply one method of implementing it. The grievance does raise an arbitrable issue in this respect.

It was also said that the matter was not arbitrable because it was brought as a union, not an individual grievance. The detailed grievance procedure set out in article 24, and in particular in article 24.5, is directed to individual complaints. The section as a whole, it may be noted, is headed "Discipline and Grievance Procedure". Article 25, on the other hand, provides for the arbitration of the agreement. Under article 25, it would be my view that either party would be entitled to take such matters to arbitration. If the objection were sustained, it would follow that neither the company nor the union – the two parties to the collective agreement – would have access to the arbitration process.

In this collective agreement there is not, as there is in many agreements, provision for a separate procedure for "individual" or "policy" grievances. Where such a distinction is drawn, then objection may be taken that the proper procedure has not been followed in a particular case. Here, however, it seems to be suggested that the union as such simply has no access to the grievance and arbitration procedure, a suggestion which in my view is not well-founded. In my view the collective agreement does contemplate that the parties may have recourse to the arbitration process.

Accordingly, it is my determination that the matter is arbitrable and properly before me. For the reasons above, however, it cannot succeed.

(signed) J. F. W. WEATHERILL
ARBITRATOR