CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 489

Heard at Montreal, Tuesday, December 10th, 1974

Concerning

Canadian NATIONAL RAILWAY COMPANY

and

Canadian BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood claims that the Company violated Article 4.5 of Agreement 5.1 when it declined to allow Miss L. Storm to displace a relief employee when she returned from a period of sickness on March 14, 1974. The Company contends that its action follows the provisions of a Company posted notice in existence and operative since February 18, 1972 covering such circumstances.

JOINT STATEMENT OF ISSUE:

On March 12, 1974 Miss L. Storm, General Clerk in the Vancouver Express, did not come into work. The Company was subsequently advised that she was ill and would not be in on that day. She was not into work on the following day, March 13, either and the Company received no communication on her condition on that day. During Miss Storm's absence the Company arranged that her position be filled on a relief basis. On March 14 Miss Storm came to the Express Office seeking to commence work and was advised that she could not replace the relief employee who reported for work that day but could do so on the following day. This action was in line with the provisions of a Company notice posted on the bulletin board since February 18, 1972 and made known to the local Brotherhood representative at that time. The notice requires that employees returning to work after being off sick must advise the Company by 0300 p.m. of the previous day of their intended return to work. The Brotherhood challenges the Company's right to set such a rule and claims that the Company' action in regard to Miss Storm is in violation of the provisions of Article 4.5 of Agreement 5.1.

This grievance has been processed through the various steps of the grievance procedure and ultimately to arbitration.

FOR THE EMPLOYEE: FOR THE COMPANY:

(SGD.) J. A. PELLETIER (SGD.) g. h. bLOOMFIELD

NATIONAL Vice-President ASSISTANT Vice-President, LABOUR Relations

There appeared on behalf of the Company:

P. A. McDiarmid – System Labour Relations Officer, Montreal

G. A. Kirby – Manager – Express Centre, Vancouver

And on behalf of the Brotherhood:

R. Henham – Regional Vice President, Vancouver

T. Freitas – Local President, Burnaby

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AWARD OF THE ARBITRATOR

Article 4.5 provides as follows:

> **4.5** Regularly assigned employees who report for duty on their regular assignments shall be paid eight hours at their regular rate. Employees who are permitted to leave work at their own request shall be paid at the hourly rate for actual time worked, except as may be otherwise arranged locally.

In my view this provision in respect of payment to those who report for work contemplates a proper and timely reporting by those entitled to do so. The grievor's absence on March 12 was of course excusable as she properly advised the Company that she was ill. It does not appear that she advised the Company she would be absent on the 13th, perhaps the Company could have expected her to be at work that day, but in any event she neither appeared nor reported. The Company arranged for a relief employee to work on the 14th, when the grievor appeared that day expecting work, she was in effect demanding that the Company both pay her, and meet its obligations to the relief employee.

It is the Company's contention that the grievor was not entitled to work on the 14th, because she had not advised the Company of her intention to return. In February, 1972, the Company had promulgated the following rule:

> TO ALL EMPLOYEES
>
> In the event that it is necessary you book off on account of sickness, in future you will arrange to notify the Timekeeper at Local 237 that you will be absent.
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> When booking on, the Timekeeper must be notified by 15:00 of the day prior to returning to work. This must be adhered to regardless of which shift you are on.

In the absence of provision to the contrary in the collective agreement, the Company is entitled to impose reasonable rules relating to attendance and matters of this sort. In this case, the grievor apparently failed to advise the timekeeper of her absence on March 13, and certainly failed to give notice of her intention to return on the 14th. The rule referred to is, in my view, a reasonable one, particularly with respect to situations where, as here, a relief employee was assigned. While there was some discussion of the rule with the Union, and apparently no protest with respect to it, the rule was not made the subject of any agreement between the parties, and I regard it as one unilaterally promulgated by the Company.

The rule was, however, a reasonable one and a proper exercise of management's scheduling function. In the circumstances, the Company had no reason to expect the grievor would turn up and work, and had quite properly arranged a replacement. The grievor's reporting for duty in those circumstances was not in compliance with the rules respecting reporting, and did not entitle her to the payment claimed. For the foregoing reasons, the grievance is dismissed.

(signed) J. F. W. WEATHERILL

ARBITRATOR