CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 516

Heard at Montreal, Tuesday, September 9th, 1975

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood alleges that the Company violated Article 13.1 of the Agreement when on the evening of August 12, 1973 it advised certain employees of the Express and Intermodal Services at Halifax, Nova Scotia that there would be no work on their afternoon shift positions on August 13, 1973 while it worked Junior employees on the day shift, August 13, 1973.

JOINT STATEMENT OF ISSUE:

On Sunday evening, August 12, 1973, Clerk E.T. Levandier and six warehousemen, all on the afternoon shift at Halifax Express and Intermodal Services were telephoned by the Company and advised that no work would be required on their afternoon shift positions on August 13, 1973. This notification the Company made following the provisions of Article 13.2 of the Agreement as it applies to a strike situation and was necessitated by a reduction in traffic movement arising out of the rotating railway strike throughout the country which had commenced on July 26, 1973. None of the grievors attempted to displace employees scheduled to work the day shift on August 13, 1973.

The Brotherhood alleges that in allowing junior employees to work on the day shift on August 13, 1973 after advising the afternoon shift that there would be no work in their positions on that date that the Company violated Article 13.1 of the Agreement. The Company contends that the grievors were correctly notified under the provisions of Article 13.2 of the Agreement as it applies to a strike situation and the fact that employees Junior to the grievors worked the day shift on August 13, 1973 whom the grievors did not seek to displace, was not a violation of Article 13.1 as alleged.

These grievances have been progressed through the various steps of the grievance procedure and ultimately to arbitration.

FOR THE EMPLOYEES:	FOR THE COMPANY
(SGD.) J. A. PELLETTER	(SGD.) S. T. COOKE
NATIONAL VICE PRESIDENT	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

P. A. McDiarmid	– System Labour Relations Officer, Montreal
J. A. Cameron	– Regional Labour Relations Officer, Winnipeg
D. J. Matthews	– Assistant Labour Relations Officer, Moncton
K. A. Pride	– Employee Relations Officer, Montreal
W. W. Wilson	– Labour Relations Assistant, Toronto

And on behalf of the Brotherhood:

L. K. Abbott	– Regional Vice President, Moncton
W. H. Matthew	– Regional Vice President, Winnipeg
J. A. Pelletier	– National Vice President, Montreal
H. Henham	– Regional Vice President, Vancouver
J. D. Hunter	– Regional Vice President, Toronto
G. Thivierge	– Representative, Montreal

AWARD OF THE ARBITRATOR

The Company gave notice of staff reduction to the grievors, pursuant to Article 13.2. It may be that this notice was insufficient, in that a copy of it was not given to the Local Chairman, and the notices were not give in writing. However this may be (and without deciding any question of the Union's right to refer to alleged violations other than those referred to in the Joint Statement of Issue), the issue raised here is as to the Company's compliance with Article 13.1. That article is as follows.

> **13.1** When staffs are reduced, senior employees with sufficient ability to perform the work will be retained.

Here, the staff was reduced. The reduction affected only the afternoon shift of August 13. Employees on the day shift were not affected, even although they were junior to the grievors. The Company's argument was that the grievors did not attempt to exercise the seniority rights which were theirs under Article 13.3. That, again, is another matter, although it would appear that the advice given the grievors as to their lay-off for that day was such as to indicate that such rights would not be honoured with respect to August 13. In any event, the instant case turns on Article 13.1.

By that article, the retention of senior employees (with sufficient ability) is required in cases of staff reduction. Article 13 must no doubt be read as a whole, but the general principle of seniority rights is clearly expressed in Article 13.1 itself. That principle is not simply that employees "may" exercise rights of displacement, as under Article 13.3. Rather it applies generally to situations where staffs are reduced. The determination of the size of staff is a management function, and in addressing itself to what must be done when management determines that staff must be reduced, the collective agreement imposes a requirement on the employer in that regard. The requirement is that senior employees (with sufficient ability) be retained. The Company's action in the instant case simply ignored that requirement, and as a result the grievors lost a day's work which they would otherwise have had. It may be that had the Local Chairman had notice, and had the grievors aggressively asserted their rights, a different result would have been reached, but that does not appear likely from the material relating to the case, and in any event it does not reduce the Company's own responsibility for creating the situation.

The staff was reduced, but the senior employees with sufficient ability to do the work were not retained. In this respect, the Company was in violation of the collective agreement. An exception must be made in the case of Mr. Levandier, who had certain restrictions on his work and would not, it seems, have been entitled to be retained. His grievance must therefore be dismissed. The other grievances are allowed.

(signed) J. F. W. WEATHERHILL
ARBITRATOR