CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 580

Heard at Montreal, Wednesday, November 10, 1976

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood alleges that the Company violated Articles 24.5 and 2S.15 of Agreement 5.1 when they refused to pay claims of Messrs. McNeil, Seaman and McCabe.

JOINT STATEMENT OF ISSUE:

Sometime during the late hours of 2 February or early hours of 3 February, the smoke stack for the heating plant for the Carload Centre at Truro, N.S. was blown over by the force of the wind and fumes from the heating plant were sucked into the building by the ventilating system located on the roof.

Employees on the 00:01 to 08:00 hour shift and 08:00 to 16:00 hour shift worked their regular tours of duty and management felt that the situation was not serious enough to warrant closing the plant. When Industrial Services Clerks D. McNeil and F.R. McCabe, and Train Movement Clerk J.B. Seaman reported for their regular assignment at 16:00 hours on 3 February, the fumes were still present. After working for approximately forty-five minutes, the three above-mentioned employees asked for and were granted permission to leave work as they considered the fumes would jeopardize their health.

Messrs. McNeil, McCabe and Seaman each presented a claim for $41.17 for the balance of their work day on 3 February, 16:45 to 24:00 hours. The Company has declined these claims, and the Brotherhood has progressed a grievance on behalf of the three above-mentioned employees contending the Company has violated Articles 24.5 and 28.15 of Agreement 5.1 by the non-payment of such claims.

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

There appeared on behalf of the Company:

D. J. Matthews	– System Labour Relations Officer, Montreal
P. A. McDiarmid	– System Labour Relations Officer, Montreal
N. B. Price	– Labour Relations Assistant, Moncton
R. T. Russell	– Labour Relations Assistant, Winnipeg
A. E. MacKenzie	– Carload Supervisor, Truro

And on behalf of the Brotherhood:

L. K. Abbott	– Regional Vice President, Moncton
J. A. Pelletier	– National Vice President, Montreal

AWARD OF THE ARBITRATOR

Article 24.5 relates to the filing of complaints by employees who feel they have been unjustly dealt with. That article is used by the grievors in this case; there would appear to be no question of its violation.

Article 28.15 requires the Company to make reasonable efforts “where practicable”, to ensure that premises are heated, lighted and ventilated. In fact the premises in question were not well ventilated on the day in question, but this was due to circumstances quite beyond the Company’s control. There could be no finding, in the circumstances of this case that the Company violated Article 28.15.

The grievors did not work because they considered it unsafe to work in the conditions referred to. Most employees did work, but, from the material before me, I would not conclude that the grievors were necessarily wrong. They were not disciplined, but they were not paid, except for the time they were actually at work. Most of the arbitration cases referred to by the Union were cases in which an employee had been disciplined for refusal to perform certain work on the ground that it was unsafe. Here, the grievors were not disciplined; rather, they left work. If they had been disciplined, then it would be necessary to determine whether their refusal to work was reasonable or not. Here, however reasonable their action may have been, the fact is that they did not work. There does not appear to be any obligation on the Company to pay them in such circumstances.

Article 4.5 of the Collective Agreement is 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.

It would appear that in some circumstances employees would be entitled to pay, even though they do not work. There is specific provision, however, for employees who are permitted to leave work at their own request. Here, the employees left on their own. It is said, contrary to what is in the Joint Statement, that they left without permission, but that would not improve their position, and in any event it does not appear that they were instructed to stay. The case, I find, comes within Article 4.5, and the employees were, in the circumstances, entitled to pay only for actual time worked.

For the foregoing reasons the grievance is dismissed.

(sgd.) J. F. W. WEATHERILL
ARBITRATOR