CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 581

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 the Company violated Article 13.3 of Agreement 5.1 when they failed to give Mr. S. Shewchuk, Industrial Services Clerk at Thunder Bay, Ontario, notice of the abolishment of his position when the rest days of his assigned position were changed.

JOINT STATEMENT OF ISSUE:

On 3 October 1975 Mr. Shewchuk was advised that effective 6 October, the rest days of his assignment were being changed to Saturday and Sunday from Sunday and Monday.

The Brotherhood contends that the Company should have advised Mr. Shewchuk that his position was to be abolished on a certain date and that a bulletin advertising the new position should have been posted to be awarded to the successful applicant on the same date as the abolishment of the former position. The Company contends that Mr. Shewchuk was given proper notice in accordance with Article 6.1(b) and the position was properly declared vacant and bulletined under Article 12.4.

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

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:

W. H. Matthew	– Regional Vice President, Winnipeg
J. A. Pelletier	– National Vice President, Montreal

AWARD OF THE ARBITRATOR

Prior to the change of hours in question, the grievor's assignment was 14:00–22:00 hours, Tuesday to Friday, and 08:00–16:00 hours on Saturday, Sunday and Monday were his rest days.

On Friday, October 3, 1975, the grievor was advised that the rest days would be changed to Saturday and Sunday and that the assignment would work 14:00–22:00 hours, Monday to Friday. Article 12.4 is as follows:

> **12.4** A permanent position shall be declared vacant, and bulletined only to the seniority group at the station or terminal affected, when the regularly assigned starting time or spread of hours is changed two hours but less than eight hours, the rate of pay is changed, except as a result of a general wage increase, or assigned rest day or days are changed. Such position shall be awarded to the qualified senior employee at such station or terminal who makes written application therefor within five calendar days from the date the bulletin is posted, and subsequent vacancies will be advertised in the same manner. An employee, displaced as a result of the foregoing must within five calendar days of being displaced, exercise his seniority rights to another position which he is qualified to fill in his own seniority group at his station or terminal. Such an employee, after so exercising his seniority, but before working on such position, may displace a junior employee filling a temporary vacancy. When the starting time or spread of hours of a position is changed eight hours or more, the position will be bulletined to the Area.

It was necessary, under that article, to declare the position vacant, and bulletin it. This was done. Article 13.3 sets out the rights of a person whose position is abolished. There is really no allegation to the effect that the grievor was prevented from exercising his seniority under this article. The issue seems rather to be whether or not the abolition of the position and consequent displacement of the grievor was improper. Since, by reason of the extent of the change in schedule, it was required, under article 12.4 to declare the position vacant, the real question appears to be whether the notice of the change was sufficient. That is, the Company was entitled to alter the assignment, having regard to the nature of the alteration, it was required to declare the position vacant and bulletin it, there remains to be determined whether the Company was under any special obligation to the grievor in these circumstances.

Article 6.1(b) of the collective agreement permits reassignment of days of service on 72 hours notice. The grievor was not required to work on his Sunday and Monday rest days, and thus had 72 hours' notice of the change. In fact, he accepted to work on the new assignment starting on the Monday, pending the bulletining of the position, but that neither prejudices nor advantages his case.

It was argued, in effect, that the new position ought not to have been filled until it was filled by bulletining, that is, that the old position should have been continued until that time. I was not referred to any provision of the collective agreement which would support that view. By Article 6, noted above, the Company may reassign days of service. It was required to bulletin the position in question, and no employee's rights are affected by its being filled pending the outcome of the bulletin. The grievor has not been prejudiced in the assertion of rights under article 13. There is nothing in **Case No. 253** to support the view that the bulletining procedure for a new assignment must be completed before a previous assignment can be stopped.

There has been no violation of the collective agreement in these circumstances. Accordingly, the grievance must be dismissed.

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