CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 709

Heard at Montreal, Tuesday, June 12, 1979

Concerning

CN MARINE CORPORATION

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Union claims that the Company has violated Article 38.4 of Agreement 5.61 by not providing three full meals per day to employees Working on tied up vessels at Borden, P.E.I.

JOINT STATEMENT OF ISSUE:

On November 21st 1978 the M.V. "Holiday Island" and the M.V. "Vacationland" were tied up for the winter season and the maintenance crews assigned working the 0800-1600 shift were provided with a noon meal only. Subsequent to discussions with the Union on November 28th the Company made available a continental breakfast and in some situations a lunch after 1600 hours in addition to the hot noon meal. The Union submitted a grievance claiming a violation of Article 38.4 of Agreement 5.61 as in previous years a full breakfast, a dinner and a hot meal after 1600 hours was made available. The Company denied the grievance at all steps of the grievance procedure claiming that the meals that are being provided more than meets the requirements of Article 38.4.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) L. K. ABBOTT	(SGD.) R. J. TINGLEY
REGIONAL VICE-PRESIDENT	VICE-PRESIDENT AND GENERAL MANAGER

There appeared on behalf of the Company:

N. B. Price	– Manager Labour Relations, Moncton
Capt. D. Graham	– Marine Superintendent, Borden

And on behalf of the Brotherhood..

B. Hould	– Representative, Moncton
L. K. Abbott	– Regional Vice-President, Moncton

AWARD OF THE ARBITRATOR

Collective Agreement 5.61 applies to employees generally grouped, as indicated in Article 28.1, in the Unlicensed Deck Department, the Unlicensed Engineroom Department, and the Steward's Department. The classifications covered are more specifically enumerated in Article 29. They are described in the Company's brief as being a "shore-based maintenance gang", although at the hearing the Union advised that when the maintenance gang was set up ashore, it was understood that their conditions would be those of ships' crews.

The particular situation with which this case deals is that of the maintenance crews during the winter season. While the vessels are tied up and while the crews work a regular day shift. The issue is whether or not, by virtue of Article 38.4 of the collective agreement, they are entitled to "three full meals per day", as the Union claims.

Article 5.61 is as follows:

> **38.4** Employees covered by this agreement, except Transfer Operators and Dockmen, shall receive their meals free of charge.

Clearly, the article imposes an obligation on the Company to provide certain meals for the employees to whom the article applies. The question is as to the extent of that obligation. It is not suggested that it would extend to cover all meals which an employee might require throughout the life of the collective agreement: on his days off, while he is on vacation, on leave of absence, or the like. (Although one would imagine there would be an obligation to provide meals for an off-duty or sick employee while at sea.). The Company's position is that it complies with Article 38.4 in providing a hot noon meal to the employees during their shift.

The Union's position is that Article 38.4 is ambiguous, in that the language used does not sufficiently delimit or indicate the extent of the meals to which "their meals" refers. While it may be arguable that no ambiguity would be found in this expression if it were found in a collective agreement involving an industrial plant, it is my view that, in the context of a collective agreement involving employees on vessels, the expression is ambiguous, in that the scope of its reference is not clear and that extrinsic evidence may properly be considered to resolve the ambiguity.

I do not consider that the interpretation advanced by the Union (relying on the extrinsic evidence) leads to an "absurd" conclusion, as that term is used in the cases (usually as meaning a conclusion which is contradictory of some other provision in an agreement, or as simply impossible of application). The interpretation advanced by the Union is that which the language was in fact given, in the past, by the Company.

The Company did, for some years, maintain the practice of providing three full meals per day – breakfast, lunch and supper – to the employees in question during the winter tie-up. It explains that it did so partly because there was then another vessel on which full service was available, and partly through laxity in control. The fact is, however, that such a practice did develop, that it lasted for some time, and it is proper to conclude that it was relied on by the employees and by the Union – a Company proposal on the matter, put forward at negotiations, not finding its way into the collective agreement. The practice, that is, is one of which all concerned were aware.

Had no such practice developed, and were the question simply one of whether the language used, without more, supported the Union's contention, a strong argument could certainly be made that the provision of breakfast and supper for a shore-based group of employees on a day shift would in all the circumstances, be unusual and that the Union's interpretation was not a reasonable one. The circumstances, as I have indicated, are not those of an industrial plant, and indeed in the particular circumstances of the employees concerned, it would be possible to argue that the provision of three meals is not really as unreasonable as might at first appear.

However that may be, the practice on which the Union relies did develop and does indeed establish the extent of the obligation arising under Article 38.4 during the tie-up period. From the material before me, that obligation is to provide three full meals (breakfast, lunch and supper) per day to the employees concerned. Nothing in the material before me suggests that the obligation would extend beyond any employee's working day.

In the circumstances, it must be my conclusion that in reducing the meal service as it did, the Company was in violation of Article 38. It is my award that the Company provide, in the circumstances described, a meal service of the type provided prior to November 21, 1978.

(signed) J. F. W. WEATHERILL
ARBITRATOR