

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 405

Heard at Montreal, Tuesday, April 10th, 1973

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

TRANSPORTATION-COMMUNICATION DIVISION OF BRAC

DISPUTE:

Claim of Mr. M. A. Trottier for loss of his position of Train Dispatcher and the difference in wages between that of an Operator and a Train Dispatcher.

JOINT STATEMENT OF ISSUE:

On December 14th, 1972, Dispatcher M.A. Trottier was advised he would be displaced on or about Tuesday, December 19th, 1972, from the position of second trick Dispatcher, Lachute Sub., by a former Official of the Company forced to return in the bargaining unit.

The employees contend that Article 5.3 of the Collective Agreement was violated and that Mr. Trottier was improperly displaced.

The Company contends that upon promotion out of the bargaining unit Mr. Morency's seniority rights were protected under provision of Article 2.4(a) of the Collective Agreement and that in displacing Mr. Trottier he was simply exercising his seniority as provided for in the agreement.

FOR THE EMPLOYEES:

(SGD.) R. J. CRANCH
SYSTEM GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) E. L. GUERTIN
GENERAL MANAGER, O & M,
CP RAIL

There appeared on behalf of the Company:

R. L. O'Meara	- Supervisor, Labour Relations, A.R., CP Rail, Montreal
M. M. Yorston	- Asst. Supervisor Labour Relations, A.R., CP Rail, Montreal
J. B. Chabot	- Superintendent, Laurentien Division, CP Rail, Montreal

And on behalf of the Brotherhood.

R. J. Cranch	- System General Chairman, T-C Div. of BRAC, Montreal
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J. G. Turcotte - District Chairman, Laurentien Div., T-C Div.
of BRAC, Mtl.
M. Krystofiak - Gen. Secy. Treasurer, T-C Div. of BRAC,
Montreal

AWARD OF THE ARBITRATOR

On April 1, 1964, Mr. J. A. Morency was promoted from a position of permanently established Train Dispatcher, a position within the bargaining unit, to that of General Agent at Quebec, a position outside the bargaining unit at the time of his promotion, a Protection of Seniority Certificate was issued to Mr. Morency over the signatures of representatives of the Company and the union. Such a Certificate represented the sort of "understanding" referred to in Article 2.4 (a) of the collective agreement (which provision remains, in its substance, in effect), and without it Mr. Morency would have forfeited his seniority rights. The Certificate guaranteed protection of Mr. Morency's seniority dates as Assistant Agent, Operator, and Train Dispatcher.

On December 15, 1972 Mr. Morency was removed from his supervisor position and was left to the exercise of his seniority rights. He was allowed to displace the junior permanent Dispatcher on the seniority district, Mr. Trottier, who now grieves. Mr. Trottier's seniority as a Dispatcher is, of course less than that of Mr. Morency.

It is the Union's argument that Mr. Morency was not entitled to displace any junior employee from a position he held at the time Mr. Morency sought to exercise his seniority, and that the seniority rights retained by Mr. Morency could be exercised by him only by bidding on bulletined jobs. It was shown that in fact there were jobs available for which Mr. Morency could expect to have been selected by reason of his seniority and qualifications, but clearly this consideration does not affect the question whether it was proper for the senior employee, with protected rights of seniority, to displace a junior man on his return to the bargaining unit. The issue in this case would be the same even if there had been no bulletined jobs at the material times.

The question is one of the meaning and effect of the "seniority rights" which were retained by Mr. Morency by virtue of the collective agreement and the Protection of Seniority Certificate. As was pointed out in Case No. 34 a supervisory employee who, being returned to the bargaining unit, may be entitled to exercise certain seniority rights would not, subject to express provision in the collective agreement, have any higher rights than those of an ordinary employee. Since the only express provision dealing with such a question relates only to Chief Dispatchers (Article 5.4), the most apt analogy would appear to be to that of an employee whose position had been dispensed with or who had been displaced. Such a person is not necessarily, however, left simply to wait until a Job opening arises, and where junior employees hold positions for which he is qualified, he may be able to exercise his seniority rights to obtain such a Job. That is one reason for the great value to employees of seniority rights.

While, as was observed in Case No. 347, an employee outside the bargaining unit should not be accorded seniority rights of greater scope than those of an employee in the unit, no reason appears for reducing the value of seniority rights held by an employee who has been returned to the bargaining unit. Such a person is in the position of an employee on lay-off or designated for lay-off, and the provisions of the agreement relating to "reduction in staff" would appear to me to apply to such a situation. The opening words of Article 5.3 (a), "In case the number of full-time permanent dispatchers working in an office is reduced - - -", should, I think, be regarded as referring to the general circumstances in which the operational provisions which follow are to be applied: positions are taken in order of seniority, and displacement of juniors is done first on a seniority district and then (by Article 5.3 (i) on a regional and area basis. To apply these provisions in Mr. Morency's case was to give effect to the seniority rights which he had retained. Not to have applied these provisions would have reduced his seniority rights. I am unable to conclude that there was any violation of the collective agreement in what was done.

For the foregoing reasons, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR