

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.648

Heard at Montreal, Tuesday, January 10, 1978

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT
HANDLERS,
EXPRESS AND STATION EMPLOYEES

DISPUTE:

Claim of Messrs. C.J. Griffin and F.D. Hodges for eight hours pay as Checkers account not permitted to exercise their basic seniority on March 22, 1977.

JOINT STATEMENT OF ISSUE:

On March 22, 1977 the following six Checkers were employed:

CHECKERS CALLED	CHECKER'S SENIORITY DATE	BASIC SENIORITY DATE
-----	-----	-----
K. E. Palmer	December 16, 1936	December 16, 1936
C. G. O'Keefe	December 20, 1942	August 25, 1942
M. R. Smith	February 13, 1947	December 16, 1936
V. Theriault	December 31, 1947	November 25, 1941
J. N. Doucet	December 31, 1947	January 13, 1942
R. Cameron	December 31, 1947	February 23, 1943

While all of the Checkers called were senior to both Messrs. Hodges and Griffin on the Checker's Classification list, four of the Checkers called were junior to both Messrs. Hodges and Griffin on the basic seniority list. The seniority dates of Messrs. Hodges and Griffin are as follows:

	CHECKER'S SENIORITY DATE	BASIC SENIORITY DATE
	-----	-----
C. J. Griffin	January 2, 1965	December 12, 1939
F. D. Hodges	February 21, 1955	February 3, 1940

Messrs. Hodges and Griffin were not required in their basic freight handler's classification and requested that they be permitted to exercise their basic seniority over junior employees, in accordance with the provisions of the Job Security Agreement. They were not permitted to do so.

It is the contention of the Union that the Memorandum of Agreement

effective June 1, 1965 (copy attached) revised the Collective Agreement so that Freight Handlers may exercise seniority in accordance with Article 1 (e) of Appendix "B" of the Job Security Agreement.

It is the contention of the Company that the June 1, 1965 Memorandum of Agreement did not revise the Collective Agreement and further, that Appendix "B" of the Job Security Agreement has no application in the instant case.

FOR THE EMPLOYEES:

(SGD.) W. T. SWAIN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. A. SWANSON
GENERAL MANAGER, O. & M.
ATLANTIC REGION, CP RAIL

There appeared on behalf of the Company:

M. A. Pinard - Supervisor Labour Relations, CP Rail, Montreal
D. Cardi - Labour Relations Officer, CP Rail, Montreal
R. Tufts - General Shed Foreman, West Saint John Wharf, CP Rail, N.B

And on behalf of the Brotherhood:

W. T. Swain - General Chairman, B.R.A.C., Montreal
D. Herbatuk - Vice General Chairman, B.R.A.C., Montreal
J. M. Scott - Vice General Chairman, B.R.A.C., Saint John, N.B.

AWARD OF THE ARBITRATOR

The two grievors, as is clear from the Joint Statement, have greater basic seniority than certain employees who worked on the day in question. The grievors are Freight Handlers. There being no work available for them in that classification, they seek to exercise their basic seniority in order to work as Checkers. They have seniority dates as Checkers, and no question of qualifications appears to arise in this case. Their seniority dates as Checkers, however, are subsequent to those of the employees who worked in that classification, even though, as noted, some of those employees were junior to the grievors in terms of basic seniority.

The question to be determined is whether, in the circumstances of this case, the grievors could rely in their claim to work as Checkers, not merely on their classification seniority as Checkers (which was not sufficient to entitle them to work as against the other employees) but on their basic seniority, in which case the grievance would succeed.

There are two agreements covering rules and wages for the employees concerned, one covering (inter alia) Checkers and the other covering (inter alia) Freight Handlers. The two agreements, it appears, cover a total of ten employee classifications, and in respect of those

classifications the Company maintains nine separate seniority rosters. Under either agreement vacancies are subject to bulletin - except that under the agreement which includes Freight Handlers, that classification itself is not subject to bulletin. Successful bidding on any bulletin is based on ability, merit and seniority. As has been noted, it does not appear that these matters are in issue in the instant case.

Wharf employees work on a daily call basis, employees being called in seniority order from the appropriate roster in accordance with the need for work in a given classification. On the day in question the grievors were not called as Freight Handlers because they did not have sufficient seniority on the Freight Handlers' roster (it is, indeed, the basic classification). There is no complaint about that. Further, they were not called as Checkers because they did not have sufficient seniority on the Checkers' roster. That is what the complaint is about. The question may be said to be whether the grievors' seniority on the Checkers' roster matters, given their basic seniority and (I assume for the purpose of this case), their qualifications.

The matter is governed, of course, by the terms of any applicable collective agreement between the parties. As a general matter, the system of entitlement to work on a daily call basis (as opposed to entitlement to exercise seniority where an employee is laid off, a matter which I do not determine here) is as has been described, and it appears to be common ground that an employee is only entitled to be called to work in any classification in accordance with his seniority in that classification unless the effect of the agreement effective June 1, 1965 is to alter that situation.

In its submission made at the hearing, the Company stated its view of the Union's position very broadly, indicating that the Union claimed that a freight handler, even if he had not established himself in any other classification and his name had never been shown on any classification roster, gained the right to work in these various classifications in preference to employees whose names were on the classification rosters so long as their basic freight handlers' seniority was greater than that of other employees. This can be restated as being the view that an employee could at any time claim any job in which he had greater seniority than an incumbent. I do not consider such a far-reaching proposition to be a fair statement of the Union's position; in any event, such broad question is not involved here, because the grievors do in fact have seniority in the Checkers' classification. The question is whether they can use their basic seniority in order to claim work as a Checker - again, it should be repeated that the issue arises with respect to work on a daily call basis, and not with respect to the exercise of seniority in a lay off or some other situation.

The last paragraph of the agreement effective June 1, 1965, is as follows:

"Separate Collective Agreements between the Brotherhood of Railway & Steamship Clerks and the Company that are directly affected by the seniority and related rules changes, including qualification rules, in this Memorandum of Agreement, shall be

amended to the extent necessary to conform to the provisions of this Memorandum of Agreement, such changes to be effective June 1st, 1965."

This agreement, on its face, requires the parties to amend, or perhaps in itself did amend certain other agreements in certain respects. The question is, then, whether it amended the agreements involved here in such a way as to support the claim now advanced on behalf of the grievors. There was no express amendment of the agreements involved here in this regard, and the conduct of the parties in the period since June 1, 1965, does not show that it was considered that, at least as far as entitlement to daily calls was concerned, the seniority provisions had been amended. There was, however, experimentation with "preference rosters" by virtue of which, if sanctioned under the collective agreement, claims such as those before me might succeed. To the extent that the practice of the parties is to be considered, it does not show that they in fact considered the applicable collective agreements as having been amended.

Appendix "B" of the Job Security Agreement, referred to in the Joint Statement, provides in Article 1(e) as follows:

"1. An employee who is not disqualified under Clause 4 hereof, shall be eligible for a benefit payment in respect of each full week of seven consecutive calendar days of layoff (herein called "a claim week") or to a severance payment provided he meets all of the following requirements:

(e) He has exercised full seniority rights on his basic seniority territory as provided for in the relevant collective agreement, except as otherwise expressly provided in Clause 4, paragraphs (b) and (c) of this Appendix "B".

This provision simply provides that in order for an employee to be eligible for benefits under the Job Security Agreement, he must exercise "full seniority rights" on his basic seniority territory. It does not go to the question of what those seniority rights may be. The instant case involves a claim to be assigned certain work. It may be that in some circumstances, as in the case of a lay-off, employees such as the grievors could exercise their seniority rights so as to displace Checkers having less basic seniority. I do not consider, however, that that is the issue here. The grievors have not, from what appears in the Joint Statement, been laid off.

The agreement of June 1, 1965 does provide for the exercise of seniority rights to displace junior employees in a seniority group where an employee's position is abolished or where he is displaced. It provides as well for the provision of basic seniority territories and groupings, and while I make no findings of fact on the matter in this case, it would appear that Freight Handlers and Checkers may well be in the same "seniority group" for this purpose. That purpose is not, however, the claiming of assignments which are on a daily call basis. The grievors positions were not abolished and they were not displaced.

In my view, the agreement of June 1, 1965 does not alter the

arrangements which have existed and do exist under the applicable collective agreements with respect to the calling of employees on a daily basis on their assignments. While, as I have noted, it may be that its effect is to permit the exercise of seniority in some cases, it does not permit that exercise in the circumstances of this case.

The Company contended that even had the grievors been laid off, they would not have been entitled to exercise their basic seniority with respect to Checkers' jobs. That is a matter which, for the reasons I have given, need not be determined in this case.

For the reasons above set out, the grievance is dismissed.

J. F. W. WEATHERILL
ARBITRATOR