CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 761

Heard at Montreal, Tuesday, July 8, 1980

Concerning

CANADIAN PACIFIC TRANSPORT COMPANY LIMITED
(C.P. Transport - Western Division)

and

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

EXPARTE

DISPUTE:

Claim that Mrs. J. Zikman, Clerk, C.P. Transport, located at Winnipeg, Manitoba, was displaced from her position in violation of the collective agreement.

EMPLOYEE'S STATEMENT OF ISSUE:

Mrs. S. Rurak, Clerk, C.P. Express, Winnipeg, was displaced from position.

Article 7.3.1 of the collective agreement between C.P. Express and B.R.A.C. provides that a displaced employee "must within three days displace a full-time junior employee in his local seniority group."

Mrs. Rurak did not comply with Article 7.3.1, therefore, forfeits rights under Article 3(b) (i) of the Memorandum of Agreement.

The Union requested by letter that C.P. Transport agree to submit to the Canadian Railway Office of Arbitration. The Company did not reply.

FOR THE EMPLOYEE:

(SGD.) R. WELCH
SYSTEM GENERAL CHAIRMAN

There appeared on behalf of the Company:

N. W. Fosbery - Director, Labour Relations, CP Transport, Toronto
B. D. Neill - Manager, Labour Relations, CP Express, Toronto

And on behalf of the Brotherhood:

R. Welch - System General Chairman, B.R.A.C., Vancouver

W. T. Swain - General Chairman, B.R.A.C., Montreal

AWARD OF THE ARBITRATOR

In this case the grievor, a Clerk employed by CP Transport at Winnipeg, alleges that she was improperly displaced by reason of another employee's exercise of seniority.

The senior employee was Mrs. S. Rurak, who had been employed by CP Express, also at Winnipeg. Mrs. Rurak exercised seniority pursuant to a Memorandum of Understanding dated March 12, 1975, by which employees of one Company may be entitled to exercise their seniority to obtain positions in the other.

The material provisions of the Memorandum of Understanding are as follows:

> "3. (B) The following procedures shall apply in respect of an employee of CP Express or of CP Transport whose position is abolished or who is displaced:
>
> (i) Must exercise his seniority on his Company's local seniority group on a position for which qualified;
>
> "(ii) If unable to displace under (i), then he may exercise his seniority on the other Company's local seniority group on a position for which qualified;"

In this case Mrs. Rurak was unable to displace a junior employee in CP Express, and so exercised her seniority rights under Article 3 (B) (ii), to displace the grievor from her job at CP Transport. It is the Union's contention that Mrs. Rurak ought not to have been allowed to do this, since she had not exercised her seniority at CP Express in timely fashion.

As a result of an Article 8 notice issued by CP Express effective February 1, 1980, Mrs. Rurak was displaced from her regular bulletined position at CP Express. She was, according to the Company's statement, unable to hold a bulletined position on the local Express seniority list. Article 7.3.1 of the CP Express collective agreement is as follows:

> "An employee whose position is abolished or who is displaced from his position must displace, within 3 working days, a full-time junior employee in his local seniority group for whose position he is qualified. An employee who fails to comply with said time limit shall not have the right to return to service by displacing a junior employee."

Mrs. Rurak did not displace anyone pursuant to that provision. It is not clear from the material that she could have done so. She was, however, appointed to a temporary holiday relief position at the Winnipeg Express terminal. On February 20, 1980, she was given a 48-hour notice of layoff pursuant to Article 7.3.8 of the CP Express collective agreement. Then on February 25, being the junior employee on her local seniority list and having exhausted all work available on that list, she moved to CP Transport, displacing the grievor pursuant to Article 3 (B) (ii) of the Memorandum of Understanding, as has been noted.

I would not consider that an employee who neglects to take advantage of seniority rights at one Company may simply wait idly for as long as it pleases him and then seek to exercise seniority rights at the other Company under the Memorandum. While the memorandum does not set out specific time limits for the exercise of rights thereunder, such rights would not, I think, last indefinitely, but would at least have to be exercised within a reasonable time, having regard to the purpose of the memorandum. In the instant case Mrs. Rurak was not idle, but remained at work for CP Express even after being displaced from her regular position. This would appear to have been a benefit to the grievor. When, later, there was no work for Mrs. Rurak at CP Express, she then exercised - promptly - her rights under the memorandum. This would appear to have been in compliance with the scheme of the memorandum. It does not appear to be the case that Mrs. Rurak slept on her rights to the detriment of the grievor.

Accordingly, it is my conclusion that in the circumstances of this case Mrs. Rurak was entitled to exercise seniority rights under the memorandum, and thus to displace the grievor. This is not to say that there are no time restraints on the exercise of rights under the memorandum.

For the foregoing reasons, the grievance is dismissed.

J. F. W. WEATHERILL
ARBITRATOR