

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 777

Heard at Montreal, Wednesday, September 10, 1980

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

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

EXPARTE

DISPUTE:

-----

Claim that Article 21.8 of the collective agreement was violated when Supervisor G.A. Reid returned to a scheduled position.

EMPLOYEE'S STATEMENT OF ISSUE:

-----

Bulletin issued October 29, 1980, over the signature of E.N. Marr, Supervisor, Customer Service Centre, Vancouver Station, quote - "Mr. G.A. Reid has relinquished position of Supervisor of Billing account health reasons." Unquote.

The Union claim a violation of Article 21.8.

The Company declined the claim.

FOR THE EMPLOYEE:

(SGD.) R. WELCH

SYSTEM GENERAL CHAIRMAN

There appeared on behalf of the Company:

P. E. Timpson	Asst. Supervisor, Labour Relations, CP Rail, Van.
S. J. Samosinski	Labour Relations Officer, CP Rail, Montreal
E. N. Marr	Supervisor, Customer Services Centre, CP Rail, Van.

And on behalf of the Brotherhood:

P. Rouillard	Vice General Chairman, BRAC, Vancouver
D. Herbatuk	Vice General Chairman, " Montreal

AWARD OF THE ARBITRATOR

-----

Mr. Reid entered the Company's service in February, 1962. In August 1977 he was working as a Clerk Trans-Pacific in the Customer Service Centre at Vancouver. He was then promoted to the supervisory

position of Supervisor of Billing in that office, and was thus no longer in the bargaining unit, although he retained certain rights under the collective agreement.

In October, 1979, Mr. Reid left the position of Supervisor of Billing, and returned to a position in the bargaining unit. His old position had been abolished in the interim, and so Mr. Reid was allowed to exercise his seniority and displace a junior employee (although, in the result, no employee appears to have been adversely affected).

Article 21.8 of the collective agreement is as follows:

"Employees promoted to official positions or to positions excepted or excluded from the terms of this agreement shall retain their rights and continue to accumulate seniority on the seniority list from which promoted.

If an employee is released from such position he must revert to the seniority list and position from which promoted, unless such position has been abolished or is held by a senior employee. In such instance employee may exercise his seniority to displace a junior employee on that seniority list.

"Employees holding excepted or official or excluded positions must exercise seniority as provided in the preceding paragraph and in accordance with Clause 25.2 before being eligible to apply for a Schedule position under bulletin."

Clearly, by the first paragraph of Article 21.8, Mr. Reid retained his seniority rights and continued to accumulate seniority at all material times. By the second paragraph, he would be entitled, if "released" from his supervisory position, either to revert to his former position or (that not being possible because the position was abolished), to exercise his seniority to displace a junior employee. The latter course was followed by Mr. Reid.

Generally, it would not be open to a supervisor who has come from the bargaining unit to return thereto and displace a junior employee, simply to suit his own preferences. That was indicated in Case No. 347. Under Article 21.8 of the collective agreement governing this case, however, a supervisor may return to the bargaining unit and exercise seniority rights if he is "released". In the instant case, it is the Union's contention that Mr. Reid voluntarily chose to leave his supervisory position. On a consideration of all of the material before me, however, this does not appear to be the case.

Certainly the notice which the Company posted on October 29, 1979, would seem to suggest that Mr. Reid's leaving the supervisory position had been a voluntary act on his part. That notice stated that Mr. Reid "has relinquished position of Supervisor of Billing account health reasons". Whether or not, on the strength of that notice alone, it could be said that Mr. Reid had been "released" is a question that need not be decided here. In this case, it is clear

from all of the material that Mr. Reid was not performing satisfactorily in the supervisory position, and that it was the Company's act which removed him from it. Whether or not Mr. Reid was happy enough to be relieved of those responsibilities is not clear, but whether he was in agreement or not, it was the Company which determined that he was to be removed from the job and he was, in fact, "released" on any appropriate definition of that term.

The notice of October 29 was prepared by the Company without consulting Mr. Reid and apparently without his knowledge. The Company could not, by its own characterization of what occurred, deprive Mr. Reid of benefit to which he is entitled under the collective agreement. The evidence is that the notice was phrased as it was as a "face-saving" gesture for Mr. Reid's benefit. It does not change the fact that his removal from the supervisory position was not to suit his preferences, but was because the Company had concluded that he should be removed. The Company did remove him, and I find that he was "released" within the meaning of Article 21.8 of the collective agreement.

Accordingly, Mr. Reid was entitled, in the circumstances, to exercise his seniority and displace a junior employee. That was in accordance with the collective agreement, and the grievance must therefore be dismissed.

J. F. W. WEATHERILL  
ARBITRATOR