

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 975

Heard at Montreal, Tuesday, September 14th, 1982

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

DISPUTE:

Claim that seniority status of M. Wood and D. Cornies should be last date of entry into Company service (Article 11.2 of Collective Agreement).

JOINT STATEMENT OF ISSUE:

Mr. Cornies was awarded Bulletin #133 based on seniority attained prior to C.P. Transport Service.

FOR THE UNION:

(SGD.) R. WELCH
System General Chairman

FOR THE COMPANY:

(SGD.) N. W. FOSBERY
Director Labour
Relations

There appeared on behalf of the Company:

N. W. Fosbery - Director Labour Relations, CP Transport,
Willowdale

And on behalf of the Brotherhood:

R. Welch - System General Chairman, BRAC, Vancouver
Paul L. Rouillard - Vice General Chairman, BRAC, Vancouver

AWARD OF THE ARBITRATOR

Article 11.2 of the Collective Agreement is as follows:

"11.2 A seniority list of all employees in each local seniority group showing name and last date of entry into the service in a position covered by this Agreement shall be posted in a place suitable for the employees concerned. System seniority lists shall be maintained on the same basis."

Reference may also be made to Articles 11.3 and 11.4, which are as follows:

"11.3 Seniority lists shall be posted on or before January 31st of each year. Lists shall be open for correction for a period of 90 calendar days on presentation of proof of error by an employee or his representative. The General Chairman and Local Chairman concerned will be supplied with a copy of the seniority lists not later than February 15th of each year.

11.4 Unless by mutual agreement between the General Chairman and appropriate Company officer, seniority standings shall not be changed after becoming established after being posted for 90 days."

The two employees in question became employees of this Company in April, 1965, when the Company acquired a Company known as Louck's Trucking Co. At that time, an agreement was made between the parties pursuant to which Mr. Wood's seniority date was acknowledged to be April 1, 1952, and Mr. Cornies' to Le April 1, 1951. These dates were recognized as their "service dates". They have so appeared on all subsequent seniority lists posted since that time.

The Union now contends that Messrs. Woods and Cornies' "last date of entry into the service in a position covered by this Agreement" was in April, 1965, and not in 1951 or 1952 as shown on the seniority list. At least with respect to the list posted in any given year, no protest can be made with respect to a seniority list after it has been posted for ninety days. It is not clear in the instant case whether or not the annual list had been posted for that period at the time this grievance was filed. If it had, then the grievance would fail on that ground. Since the facts are not in evidence, that issue remains an open one. It is also an open question whether or not entries on a seniority list, once established for a given year and carried forward to a subsequent year, may then be changed within the ninety-day period following posting in the subsequent year.

In the instant case, the parties agreed that in the case of Messrs. Wood and Cornies, their "service" included service with a predecessor Company. Their last date of entry into such service was thus the date to be shown on the seniority list. That date did thereafter appear on successive lists. Assuming, then (but without deciding the point), that seniority list entries as old as these may still be questioned, it is my conclusion that the entries in these cases are correct. The issue decided here is not the same as that determined in the "homestead rights" case (Case No. 457), in which a differ sort of question was raised. There may, however, be inconsistent treatment of seniority in the two situations. The instant case turns on the interpretation of the expression "service in a position covered by this Agreement". That means - because the parties so agreed - service in such a position wit the particular predecessor employer referred to.

For the foregoing reasons, the grievance is dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.