

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1107

Heard at Montreal, Wednesday, June 15, 1983

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)  
(Eastern Region)

and

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

DISPUTE:

Claim filed on behalf of Messrs L. DeRenzo and J. A. Butler account not permitted to displace a junior employee when their positions were abolished.

JOINT STATEMENT OF ISSUE:

After being laid off at Lambton Freight Shed, Messrs L. DeRenzo and J. A. Butler requested to displace a junior employee working as a Mobile Checker on a temporary basis. The Company refused to let either employee exercise their seniority.

The Union filed claim on behalf of both grievors, requesting that Mr. L. DeRenzo's grievance be held in abeyance pending the outcome of appeal filed on behalf of the senior grievor Mr. J. A. Butler.

The Company denied both grievances.

FOR THE BROTHERHOOD:

(SGD.) W. T. SWAIN  
General Chairman

FOR THE COMPANY:

(SGD.) P. A. PENDER  
FOR: G. A. Swanson,  
General Manager

There appeared on behalf of the Company:

B. Butterworth	- Assistant Supervisor, Labour Relations, CPR, Toronto
J. Rudniski	- Acting Supervisor, Division Yard Offices & Car Control, CPR, Toronto
P. E. Timpson	- Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

W. T. Swain	- General Chairman, BRAC, Montreal
P. Vermette	- Vice General Chairman, BRAC, Montreal

AWARD OF THE ARBITRATOR

The grievor, Mr. DeRenzo (Mr. Butler is junior to Mr. DeRenzo, and it was agreed to hold his case in abeyance), was properly laid off from Lambton Freight Shed (at least, no issue arises as to that). The issue is as to his entitlement to displace a junior employee, in particular a Mr. Griffin who held a temporary assignment as a Mobile Checker.

There are two questions which arise. The first is as to the grievor's general right to displace someone in Mr. Griffin's position, holding a temporary assignment (Mr. Griffin was replacing a permanent employee absent on vacation). The second is as to the grievor's qualifications to perform the work available.

The matter is governed by Article 25 of the Collective Agreement, the material portions of which are as follows:

"25.1 In reducing forces seniority shall govern.

25.2 An employee whose position is abolished or who is displaced shall exercise his seniority to displace a junior employee in his seniority group, if qualified in accordance with Clauses 24.1 and 24.4; except that such employee shall not be permitted to transfer from one location to another for the purpose of displacing an Office Boy, Junior Clerk, Messenger or Call Boy, unless mutually agreed. Within ten calendar days of the date his position is abolished or he is displaced, such employee shall notify the appropriate Company officer' of the position to which he will exercise his seniority and he shall fill that position within five calendar days of date of notification; except that an employee absent on leave when his position is abolished or he is displaced shall exercise his seniority within ten calendar days from date of expiry of leave.

The intent of this clause is that an employee establish himself on a permanent position. After so establishing himself such employee may exercise his seniority to fill a temporary position in compliance with the collective agreement prior to filling the permanent position on which established.

An employee who fails to comply with said time limits, unless reason satisfactory to the appropriate Company officer and the General Chairman is given for not doing so, shall not exercise his seniority to displace any junior employee, but he may be recalled to duty or may exercise his seniority to a bulletined permanent vacancy. Such employee shall only have the right to exercise his seniority to displace pursuant to this article after he again holds a permanent position and is unable to hold such position due to staff reduction."

In the instant case, there was no permanent position on which the grievor could establish himself for which he would have sufficient seniority. In my view, he was entitled to seek to exercise his seniority pursuant to the general provisions of Article 25.2. He would, however, have to be qualified in accordance with Articles 24.1 and 24.4 of the Collective Agreement. Those provisions appear in the context of an article dealing with "promotion". In referring to those articles, Article 25.2 may be read as requiring employees who seek to exercise their seniority to have the ability and merit to perform the work available, and as providing for a period in which to illustrate ability to perform. In the case of a temporary assignment, the appropriateness of any such period would have to be assessed in the light of the term of the assignment itself. In the instant case, the work sought by the grievor would have lasted some eight days.

On the material before me, the grievor did not have the "ability and merit" to perform the work in question without training and experience which would exceed the term of the assignment itself. While the grievor had worked as a Checker in the past, the work involved was shed checking, which is quite different, done in different circumstances, and calling for different knowledge from that of Mobile Checker, work which the grievor had never done. Whether or not he would be entitled to such a position on a permanent posting, where he could be trained, the grievor was not entitled, by reason of lack of qualification for the particular work, to displace the junior employee on this temporary job.

For the foregoing reasons, the grievance is dismissed.

J. F. W. WEATHERILL,  
ARBITRATOR.