

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1151

Heard at Montreal, Wednesday, November 16, 1983

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Eastern Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

On January 17, 1983, Assistant Roadmaster R. J. Morin was released from his official position and returned to the Track Maintenance Foreman position, displacing R. J. Pomfret, at North Bay Section 28 as temporary Track Maintenance Foreman.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. Section 14.18, Wage Agreement 41 was violated by allowing the displacement of R. J. Pomfret.
2. R. J. Morin should have returned to his former position at Mattawa, Ontario, as Track Maintenance Foreman.
3. Mr, R. J. Pomfret be compensated for any loss of wages including overtime from January 17, 1983, and any expenses incurred account being wrongfully displaced.

The Company denies the Union's contention and declines payment.

FOR THE BROTHERHOOD:

(SGD.) H. J. THIESSEN
System Federation
General Chairman

FOR THE COMPANY:

(SGD.) H. B. BUTTERWORTH
FOR: General Manager,
Operation and Maintenance

There appeared on behalf of the Company:

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| R. A. Colquhoun | - Labour Relations Officer, CPR, Montreal |
| P. A. Pender | - Supervisor, Labour Relations, CPR, Toronto |

And on behalf of the Brotherhood:

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| H. J. Thiessen | - System Federation General Chairman, BMW?, Ottawa |
| L. M. DiMassimo | - Federation General Chairman, BMWE, Montreal |
| E. J. Smith | - General Chairman, BMWE, London |

R. Y. Gaudreau - Vice-President, BMW, Ottawa

AWARD OF THE ARBITRATOR

On April 6, 1979, Mr. M. J. Morin bid and received the permanent position of Track Maintenance Foreman at Mattawa, Ontario. On April 1, 1980 Mr. Morin was awarded the position of Temporary Track Maintenance Foreman! North Bay, Ontario. On April 2, 1982 Mr. Morin was promoted to Assistant Roadmaster, an official (excluded) position with the Company. Mr. R. J. Pomfret, the grievor, bid for and received the Temporary Track Maintenance Foreman's position vacated by Mr. Morin. Within the period of one year after occupying the official position, Mr. Morin returned to the Temporary Track Maintenance Foreman's position. In doing so, he exercised his alleged displacement privileges under Article 14.18 of Wage Agreement No. 41 thereby "bumping" Mr. Pomfret. The grievor alleges that Mr. Morin had no "bumping" privileges with respect to the temporary position. Article 14.18 reads as follows:

"14.18 An employee accepting an official position may be returned to his former position if such change is made within a period of one year, and after one year he may displace the junior permanent employee of his class on his seniority territory."

The trade union and the employer are agreed that the dispute turns on whether Mr. Morin's "former position" described in Article 14.18 was the permanent position he occupied at Mattawa or the temporary position he occupied at North Bay. The trade union alleges that Mr. Morin forfeited the bumping rights he may have had with respect to the temporary position upon his accepting the bid for the "official" position. He therefore could only bump into the permanent position at Mattawa. The employer submits that Article 14.18 in defining "former" position makes no distinction between whether the "former" position Mr. Morin occupied prior to his promotion to the official position was "temporary" or "permanent". His "former position" must clearly mean the last position he held prior to the promotion.

The employer's position is simply un rebuttable, Mr. Morin's former position was the Temporary Track Foreman's position he occupied at the moment he accepted the Assistant Roadmaster position. That being the case, he was entitled, pursuant to Article 14.18, to bump or displace the grievor.

The trade union relied upon Article 14.5 of the Collective Agreement for the proposition that Mr. Morin forfeited his displacement privileges with respect to the temporary position upon accepting the bid for the "official" position. Article 14.5 reads as follows:

"14.5 An employee obtaining a temporary vacancy of forty-five days or more by bid in his own classification will, at the conclusion of such temporary vacancy, revert to his former permanent position unless in the meantime he obtained another position by bid."

Article 14.5 is intended to preserve the job security of an employee, upon occupying a temporary position, with respect to his former permanent position. Obviously, should that employee accept a bid to occupy another permanent position he thereby creates a vacancy in that former permanent position. Article 14.5 does not operate however to dissolve "bumping" privileges under Article 14.18 with respect to his last position long as the temporary position from which he had accepted promotion to an official position continues to exist.

For all the foregoing reasons, Mr. Morin properly exercised his bumping privileges in displacing the grievor. Accordingly the grievance must be denied.

DAVID H. KATES,
ARBITRATOR.