

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1188

Heard at Montreal, Wednesday, February 15, 1984
Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Eastern Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

A claim by the Union that Mr. R. Taillon, a B&B Labourer laid-off on April 4, 1982, should have been recalled on February 17, 1983.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. The Company violated Section 15.7, Wage Agreement 41 when Mr. R. Taillon was not recalled to work on February 17, 1983.
2. The Company violated Section 13.11 when they removed his name from the seniority list.
3. That Mr. R. Taillon be reinstated on the seniority list with full seniority and be paid total compensation that he could have earned as B&B Labourer from February 17, 1983, until reinstated.

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

FOR THE BROTHERHOOD:

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

FOR THE COMPANY:

(SGD.) P. A. PENDER
FOR: General Manager,
Operation and Maintenance

There appeared on behalf of the Company:

H. B. Butterworth	- Asst. Supervisor Labour Relations, CPR, Toronto
R. A. Colquhoun	- Labour Relations Officer, CPR, Montreal
A. Rossignol	- B&B Master, CPR, Schreiber

And on behalf of the Brotherhood:

H. J. Thiessen	- System Federation General Chairman, BMW, Ottawa
L. DiMassimo	- Federation General Chairman, BMW, Montreal
R. Gaudreau	- Vice-President, BMW, Ottawa
E. J. Smith	- General Chairman, BMW, London

AWARD OF THE ARBITRATOR

The issue in this case is whether the employer took reasonable steps to notify the grievor, Mr. R. Taillon, of his recall privileges pursuant to Article 15.7 of Wage Agreement No. 41. Article 15.7 provides:

"15.7 Except as provided in Clause 15.8, when staff is increased or when vacancies of forty-five days or more occur, laid-off employees shall be recalled to service in seniority order in their respective classifications. Failure to respond to such call within fifteen days of the date an employee is notified at his last known address shall result in severance of employment relationship, unless satisfactory reason is given."

The grievor's last known address on his application for employment form dated June 2, 1981, indicated that his postal address was "General Delivery Cartier, Ontario". The employer's superior, Mr. A. Rossignol admitted at the hearing that no letter was sent to Mr. Taillon "at his last known address" for the purpose of notifying the grievor of his entitlement to be recalled. It is clear that the employer's representative assumed that the grievor could not be contacted at that address. Indeed, efforts were made to get in touch with the grievor by asking the grievor's acquaintances of his whereabouts. When these efforts failed, the employer treated the grievor as a terminated employee. Moreover, based on the company's representations that the grievor could not be reached "at his last known address" as aforesaid, the trade union agreed to strike the grievor's name off the seniority list (see Article 13.11).

It is obvious that before the company may treat a laid off employee as having failed to comply with the fifteen day time limit for responding to an invitation to be recalled to work, it must have made every reasonable effort to have notified him for that purpose "at his last known address". As a minimum, the company was duty bound to have contacted the grievor by post (preferably registered mail) "at his last known address". In that way the company would have satisfied the relatively light burden of notifying the grievor of his recall privileges.

It was purely speculative for the employer to have assumed that such notification would not have reached the grievor. Indeed, Mr. Taillon may very well have made arrangements if he could not be contacted at that address for his mail to be forwarded to him. It simply makes no sense for the collective agreement to impose the requirement to notify the grievor "at his last known address" and for the employer not to have sent the grievor a letter to that address in order to advise him of his rights.

Indeed, the trade union demonstrated that Mr. Taillon may very well have been advised of his rights had the employer attempted to notify him as aforesaid. The documentary evidence disclosed, some months later, that the grievor received his T4 slip from the company by merely mailing that document to "Mr. Ronald C. Taillon, Cartier, Ontario, P0M 1J0".

For all the foregoing reasons, the grievance succeeds. The grievor shall be reinstated forthwith to the appropriate position with full seniority and paid compensation effective February 17, 1983.

DAVID H. KATES,
ARBITRATOR.