

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1190

Heard at Montreal, Wednesday, February 15, 1984

Concerning

CANADIAN PACIFIC LIMITED (CP Rail)  
(Prairie Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

The displacement of Mr. M. Rotariu by Mr. M. Simcak on November 16, 1982, as the Operator of a Group I machine (Rubber Tire Tractor).

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. Mr. M. Rotariu was senior to Mr. M. Simcak as Rubber Tire Tractor Operator until the Railway issued an amalgamated seniority list in 1982.
2. The Company violated Section 13.6 when it unilaterally changed the seniority of Machine Operators in 1982, without the consent of the System Federation General Chairman.
3. The seniority dates established prior to 1982 for Machine Operators continue as established in 1978, 1979, 1980 and 1981.
4. The Company violated Section 2.2 of the Machine Operators Memorandum.
5. Mr. Rotariu be reinstated to his former position as Rubber Tire Tractor Operator and paid for any loss in wages and expenses incurred since November 16, 1982.

The Company contends that the decision in C.R.O.A. Case No. 1034 also applies to this dispute. The Company denies the Union's contentions and declines payment.

FOR THE BROTHERHOOD:

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

FOR THE COMPANY:

(SGD.) E. S. CAVANAUGH  
General Manager,  
Operation and Maintenance

There appeared on behalf of the Company:

R. D. Falzarano - Asst. Supervisor Labour Relations, CPR,  
Winnipeg

R. A. Colquhoun - Labour Relations Officer, CPR, Montreal

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

When the Rubber Tire Tractor operated by Machine Operator Rotariu was upgraded to a Group I machine on April 28, 1978, the grievor acquired seniority in accordance with Article 2.2 of the Supplemental Agreement as a Group I Machine Operator as of that date. Since Mr. M. Simcak established his Group I seniority on March 14, 1977, by reason of his operating an Electromatic Tamper he properly displaced or "bumped" Mr. Rotariu when the former became redundant.

Article 2.2 of the Supplemental Agreement contemplates that "seniority is exercised by group and not by machine" (see CROA Case 1034). Accordingly even though Mr. Rotariu may have greater seniority in service with the company than Mr. Simcak, particularly in operating the Rubber Tire Tractor, his seniority for purpose of preserving his status as a Group I Machine Operator only took effect on the date his machine was upgraded. Accordingly since Mr. Simcak had greater seniority as a Group I Machine Operator than the grievor, he properly displaced Mr. Rotariu.

The notion that seniority for purposes of Article 2.2 of the Supplemental Agreement is based "by group and not by machine" was recognized by the trade union in Mr. Thiessen's letter dated August 25, 1982, that was referred to in the employer's brief:

"The most senior seniority date the employee held on machines in each classification would be his new seniority date for all machines classified in such group. If a Machine Operator did not have seniority in a higher classification previously, and the machine was upgraded, he received a seniority date of April 28, 1978, the effective date of the Agreement."

For all the foregoing reasons the grievor was properly displaced and his grievance is thereby denied.

DAVID H. KATES,  
ARBITRATOR.