

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1214

Heard in Montreal, Wednesday, March 7, 1984
Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Atlantic Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

A claim by the Union that Messrs. A. Masse, L. Asselin, J. P. Menard and C. Chartrand were improperly ranked on the 1982 seniority list as Group I Machine Operators.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. The seniority lists issued 1978 - 1981 inclusive were in accordance with Section 13.4, Wage Agreement 41, and the seniority held was as follows: A. Masse - No. 3, L. Asselin - No. 6, J. P. Menard - No. 11, and Chartrand - No. 12, in Classification "E" (Bulldozer-Frontend Loaders).
2. The 1982 seniority list issued by the Railway, these same employees were shown in Group I, which included Bulldozer and Frontend Loader and their seniority was now as follows: A. Masse - No. 92, L. Asselin - No. 93, J. P. Menard - No. 94, and C. Chartrand - No. 98, resulting in all four employees being displaced from Frontend Loader positions.
3. The Railway cannot change the list unilaterally and seniority could only be changed according to Section 13.6, Wage Agreement 41.
4. The four employees be compensated for loss of total wages account being improperly displaced and their seniority restored to the seniority dates they held on the 1981 seniority list.
5. Compensation to the four employees be retroactive 60 days from August 30, 1982, in accordance with Section 19.4, Wage Agreement 41.

The Company contends that the decision in CROA Case No. 10 also applies in this dispute. 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.) J. L. FORTIN
Acting General Manager
Operation and Maintenance

There appeared on behalf of the Company:

B. A. Demers	- Supervisor, Labour Relations, CPR, Montreal
J. H. Blotsky	- Asst. Supervisor, Labour Relations, CPR, Montreal
R. A. Colquhoun	- Labour Relations Officer, CPR, Montreal
D. J. David	- 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
L. Valence	- General Chairman, BMW, Sherbrooke
A. Masse	- Grievor
L. Asselin	- Grievor
J. P. Menard	- Grievor
C. Chartrand	- Grievor

AWARD OF THE ARBITRATOR

As determined in CROA Cases 1034 and 1190, Article 2.2 of the Supplemental Agreement contemplates that seniority is based "by group and not machine". Accordingly, when on April 28, 1978, the Bulldozer Frontend Loader Machines normally operated by the grievors were upgraded from a Group 2 to a Group I machine, the grievors acquired seniority as of that date. Incidentally, based on the Joint Statement of Issue the parties submitted their argument that at all material times the grievors regular work assignment involved the operation of the Bulldozer - Frontend Loader. Although the grievors may very well have operated other machines in various groups on a relief basis prior to April 28, 1978, I am of the view that their seniority, for purposes of the collective agreement is governed by their regular work assignment.

The trade union bases its claim that the grievors have been wrongfully placed on the seniority list by virtue of the company's violation of Article 13.6, Wage Agreement 41:

"13.6 All lists shall be open for correction on proper representation, which representation must be made by August 31st of each year. If no exceptions are taken by August 31st, the seniority dates shall be established as correct and not changed thereafter except by mutual agreement between the System Federation General Chairman or his authorized representative and the appropriate officer of the Railway."

Apparently it is suggested that because the company has no secured the trade union's agreement with respect to the appropriate placement of the grievors on the seniority list arising out of Article 2.2 of the Supplemental Agreement by August 31st of each year, then the company is estopped or prevented from unilaterally placing the grievors on the present list. Accordingly, their displacement by more senior employees in the Group I category was improper.

As I understand the material contained in the company's brief extensive negotiations were engaged in by the parties with a view to resolving anomalies and to providing for "homestead" privileges for long service employees adversely affected by the implementation of Article 2.2 of the Supplemental Agreement. Such negotiations involving employees in the Atlantic Region have not proven to be successful. Or, more succinctly, no agreement has been reached between the parties with respect to the ultimate status of some of the affected employees.

I am satisfied that object of Article 13.6 of the collective agreement is to make corrections of misplaced employees on a seniority list. As far as I am concerned by operation of Article 2.2 of the Supplemental Agreement, the grievors, effective April 28, 1978, acquired their seniority dates as of the date their machines were upgraded to Group I. The discussions engaged in by the parties were not for the purpose of "correcting" the grievors placement on the seniority list as of that date. That particular issue was resolved upon the parties entering into Article 2.2 of the Supplemental Agreement. The object of the parties negotiations, as I perceive it, was to accommodate any anomaly or hardship that arose from the implementation of that provision. For that reason the physical mechanics of settling the lists were held in abeyance pending the outcome of those negotiations. In the absence of an agreement with the trade union, however, the company properly insisted that the correct seniority list was hitherto established as of April 28, 1978.

For the foregoing reasons, there has not been demonstrate before me that the discussions that took place between the company and the trade union were in any way pertinent to the negotiations contemplated by Article 13.6 of the collective agreement. At all material times the grievors' seniority for purposes of their placement on the seniority list was correctly established on April 28, 1978.

As a result the trade union has not satisfied me of a violation of Article 13.6. The grievance is therefore denied.

DAVID H. KATES,
ARBITRATOR.