

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1413

Heard at Montreal, Tuesday, October 8, 1985
Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Request for the removal of certain names
from the seniority list of Agreement 5.15.

JOINT STATEMENT OF ISSUE:

On 23 March 1984 Part II of the 1984 seniority
list
covering non schedule, clerical and non schedule machine
operators
was posted on the bulletin boards. The Brotherhood contends
that
this was the first posting of Part II of the seniority lists
since
January 1, 1981 and that all employees covered by Part II of
the 1984
seniority list no longer have seniority rights under the terms
of
Article 10.5 of Agreement 5.15. The Company disagrees.

FOR THE BROTHERHOOD:

(SGD.) TOM McGRATH
National Vice-President

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
Assistant vice-President
Labour Relations.

There appeared on behalf of the company:

S. A. MacDougald	- Labour Relations Officer, CNR, Montreal
J. A. Cameron	- Manager Labour Relations, CNR, Montreal
J. Kelly	- Manager, Interline Freight Accounting, CNR, Montreal
G. English	- Manager, Production & Control Interline Freight Accounting, CNR, Montreal

And on behalf of the Brotherhood:

Gaston Cote - Regional Vice-President, CBRT&GW,
 Montreal
R. Johnson - Local Chairman, CBRT&GW, Montreal

AWARD OF THE ARBITRATOR

Since January 1, 1981 the company neglected to post seniority lists covering its non-scheduled clerical and non-scheduled machine operators. On March 23, 1984 the appropriate seniority lists for the two groups of non-scheduled employees were posted. It is common ground that Article 10.1 of Agreement 5.15 required that the company post the said seniority lists on the January 1st anniversary date. In that regard, the company was clearly in breach of that provision. Article 10.1 reads as follows:

"10.1 Seniority lists of the respective seniority groups shall be posted in January of each year in places accessible to the employees concerned. The date such lists are posted will be shown on the list. Such lists shall show seniority numbers, names and seniority dates of employees in such groups as established in accordance with Article 10.2. Copies of seniority lists, as posted, shall be furnished to the Local Chairman and the Regional Vice-President of the Brotherhood."

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It is also admitted that the trade union purposely failed to bring the Company's lapse to its attention. Quite clearly, scheduled employees represented by the trade union have a direct interest in minimizing the possibility of being "bumped" by excluded employees in the event the latter's return to the bargaining unit is necessitated. This may best be achieved by eliminating through forfeiture the non-scheduled employees from the seniority lists.

The trade union relied on Article 10.5 of the agreement for the notion that the non-scheduled employees whose names had not been posted over the "consecutive" two year period since January, 1981, had forfeited their seniority. That is to say, the company's failure to adhere to the required annual posting Procedures under Article 10.5 (with the trade union's collusion) deprived non-scheduled employees of their job security in the event it was found necessary to return them to the bargaining unit. Article 10.5 reads as follows:

"10.5 No change shall be made in the seniority date accredited an employee which has appeared on two consecutive annual seniority lists unless the seniority date appearing on such lists was protested in writing within the 60-day period allowed for correctional purposes. Names which have not appeared on two consecutive annual seniority lists shall not be restored to seniority lists except in accordance with Article 10.13 or by agreement with the Regional Vice-President of the Brotherhood."
(Emphasis added)

In resolving this dispute I am satisfied that the only sensible and practical interpretation that can be given the relevant portion of Article 10.5 is that advanced by the company. Article 10.5 represents a procedure for correcting and reinstating a name on the seniority lists provided the appropriate procedure for doing so is followed. In the case of an employee whose seniority has hitherto been forfeited and whose name has ceased to appear on the seniority list for two consecutive years, his or her name can only be restored to the seniority list by agreement of the Regional Vice-President of the Brotherhood.

Surely, the company's lapse in adhering to Article 10.1 (that was condoned by the trade union) cannot be seen to result in the forfeiture of an unscheduled employee's seniority. This would

not only
defeat the purpose of the provision in extending unscheduled
employees
residual job security benefits under the collective agreement
but would
allow the trade union to abdicate its statutory responsibility
with respect
to its continued duty to represent those employees while those
residual
rights are intended to be preserved.

In other words, Article 10.5 does not address itself to
the forfeiture of seniority rights but to the manner in which those
rights
might be restored once forfeited. As the company argued
Articles 10.8,
10.9 and 10.10 govern the manner in which employees in excepted
positions
retain or forfeit their seniority. Accordingly, the notion that
those
employees lose seniority by mere oversight by the company in
failing to
adhere to the annual positing procedures cannot be accepted.

For these reasons the grievance must be denied.

DAVID H. KATES,
ARBITRATOR