

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1453

Heard at Montreal, Tuesday, January 14, 1986

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Request of Mr. L. Mathieu to be returned to a position covered by Agreement 5.1.

JOINT STATEMENT OF ISSUE:

On 19 July 1983, Mr. Mathieu was displaced from a permanent position and elected to displace onto a temporary vacancy in CN Express (as it was then known). As a result of an injury, Mr. Mathieu was off work from 22 November 1983 until 14 November 1984 on Workers' Compensation. The Canada Labour Relations Board issued new certification orders dated 3 October 1984 revising the Brotherhood bargaining unit. Mr. Mathieu's last position worked now fell within the bargaining unit of another Union.

When Mr. Mathieu returned to work he requested a position within the Brotherhood bargaining unit and was allowed to assume such a position. In December 1984 the Company advised him that he had no rights to work in the Brotherhood bargaining unit. The Brotherhood contends Mr. Mathieu had a right under Article 12.15 to enter the bargaining unit covered by Agreement 5.1 and that the Company has violated Article 12.15. The Brotherhood requests Mr. Mathieu be permitted to exercise seniority rights under Article 12.15 and requests he be allowed full seniority and paid any loss of earnings or benefits.

The Company denies the alleged violation and has declined the request.

FOR THE BROTHERHOOD:

FOR THE COMPANY:

(SGD.) T. N. STOL
FOR: National Vice-President

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

There appeared on behalf of the Company:

| | |
|---------------|--|
| W. W. Wilson | - Manager Labour Relations, CNR, Montreal |
| S. MacDougald | - Labour Relations Officer, CNR, Montreal |
| C. Cancilla | - Director Human Resources, CN Route, Montreal |

And on behalf of the Brotherhood:

| | |
|----------------|---|
| R. J. Stevens | - Acting Regional Vice-President, CBRT&GW, Toronto |
| Gaston Cote | - Regional Vice-President, CBRT&GW - Observer |
| Ivan Quinn | - Accredited Representative, CBRT&G11 - Observer |
| Rejean Prevost | - Local Chairperson, CBRT&GW - Observer |
| S. Pelletier | - Observer |

AWARD OF THE ARBITRATOR

The principal issue raised herein is whether the grievor, Mr. L. Mathieu, at any material time, was a member of the CN Rail bargaining unit that would enable him to exercise "bumping" privileges pursuant to Article 12.15 of Agreement 5.1. And, in this particular regard, the parties are joined on the issue as to whether Mr. Mathieu was an "employee" of CN Rail in November 1984 when he sought to benefit from the entitlements of Agreement 5.1.

The company's brief carefully delineated the chronology of events that precipitated this dispute. It is clear that the separation of CN Express from CN Rail and its subsequent merger with other CN subsidiaries resulted in the formation of a new corporate entity referred to as Transport Route Canada Inc. As a result of this consolidation (and divestiture of CN Express from CN Rail) there resulted a certification application by both the Teamsters and the Brotherhood for the loyalties of the employees of the newly created corporate entity. Included amongst the employees who were affected by the application were the erstwhile employees of the predecessor CN Express.

At all times during the course of the proceedings before the CLRB (between July 1984 and October 1984) the grievor was held, owing to his employment relationship with CN Express, to be an employee of the new company. And, as such, Mr. Mathieu, despite his being on workman's compensation, was included on the voters list of employees entitling him to participate in the representation vote that was ultimately directed. And of course, his representative rights would thereafter be governed by the terms and conditions of employment negotiated by the successful trade union with the new employer. In due course, the Teamsters were certified as the "exclusive" bargaining agent of the employees affected in the grievor's bargaining unit.

In other words, once the grievor was held to be an "employee" of the newly created company he ceased thereafter to have any claim to the benefits contained in the CN Rail Agreement 5.1. His severance as an employee of CN Rail was formalized by directive of the CLRB and accordingly his job security thereafter could only be determined as an employee member of the newly certified bargaining unit.

For all these reasons the grievance is denied.

DAVID H. KATES,
ARBITRATOR.

