

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1738

Heard at Montreal, Tuesday 12 January 1988

Concerning

CANADIAN NATIONAL RAILWAY

And

UNITED TRANSPORTATION UNION

DISPUTE:

Claim of Yardmaster W. D. Cole of Niagara Falls, Ontario for an early retirement opportunity as provided by the Letter of Understanding dated April 25th, 1986.

JOINT STATEMENT OF ISSUE:

Pursuant to Article 34 of Agreement 4.2, the Company and the Union negotiated and agreed upon certain measures to minimize the adverse effects of a material change in working conditions initiated by the Company at Niagara Falls. Those measures were set out in a Letter of Understanding signed by the parties on April 25th, 1986.

Item 3 of the Letter of Understanding reads:

One early retirement opportunity will be made available to the following regularly assigned Yardmasters at Niagara Falls, provided these employees are eligible for early retirement under the Company's pension rules:

W. D. Cole - P.I.N. 461615 ...

Mr. Cole applied for disability retirement. He also claimed the early retirement opportunity and its attendant lump sum payment as calculated by the formula set out in the Letter of Understanding.

The Company declined Mr. Cole's claim for the early retirement opportunity.

The Union contends that Mr. Cole is eligible for the early retirement opportunity.

FOR THE COMPANY:

FOR THE UNION:

(SGD) M. DELGRECO  
for: Assistant Vice-President  
Labour Relations

(SGD) W.G. SCARROW  
General Chairman

There appeared on behalf of the Company:

J.B. Bart	Manager Labour Relations, Montreal
G.E. Bedford	Pension Services Officer, Montreal

And on behalf of the Union:

W.G. Scarrow	General Chairman, Sarnia
P.G. Gallagher	Secretary General, Committee of Adjustment, Niagara Falls,

#### AWARD OF THE ARBITRATOR

It is common ground that the rights of Yardmaster Cole must turn on the meaning of Item 3 of the Letter of Understanding of April 25, 1986. That provision clearly states that the grievor is to be given an early retirement opportunity, but only on condition that he be "eligible for early retirement under the Company's Pension Rules". It is also not disputed that, ultimately, Mr. Cole terminated his active employment with the Company on the basis of a disability retirement. He nevertheless also claims the early retirement opportunity and the further lump sum payment that would go with it. The Union submits that the disability retirement taken by Mr. Cole is in fact a form of early retirement that falls within the contemplation of Item 3 of the Letter of Understanding.

In the Arbitrator's view in these circumstances the best evidence of the meaning of "early retirement" is the Company's Pension Rules, which are incorporated by reference into the Letter of Understanding. Rule 6 of the Company's 1959 Pension Plan provides for the various forms of retirement and retirement benefits. Rule 6(2)(b) makes provision under the heading "Early Retirement" for the retirement of employees between the ages of 55 and 60. The rules do not provide for early retirement for any employee younger than 55. Rule 6(4), under the separate title "Disability Retirement" makes provision for the retirement of employees with at least 15 years' service who are unfit to follow their usual employment by reason of physical or mental disability.

The Arbitrator must conclude that early retirement and disability retirement are separate and distinct concepts within the meaning of the Company's Pension Rules. The parties must be taken to have understood the content of those rules when they made them part of their Letter of Understanding of April 25, 1986. That agreement specifically conditions the early retirement opportunity given to the grievor on a clear contingency: that he be eligible for early retirement under the pension rules. Because he retired before attaining the age of 55, Mr. Cole did not come within the scope of eligibility for early retirement. He is therefore not entitled to the benefits of early retirement, including the lump sum payment claimed.

For these reasons the grievance must be dismissed.

MICHEL G. PICHER  
ARBITRATOR