

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1773

Heard at Montreal, Thursday, 14 April 1988

Concerning

CANADIAN NATIONAL RAILWAY

And

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

The seniority status of Mrs. M. Sutton of Toronto.

JOINT STATEMENT OF ISSUE:

Effective September 1, 1978, the Company established a position of non-schedule Secretary to the Superintendent at MacMillan Yard. On the date it was established, Mrs. Sutton was promoted to this position.

The Brotherhood contends that the provisions of Article 11.11 of Agreement 5.1 were applicable when Mrs. Sutton was appointed to the position of non-schedule secretary and, therefore, her name should be removed from the Great Lakes Region 5.1 seniority list.

It is the Company's position that Mrs. Sutton was promoted to the non-schedule secretary position under the provisions of paragraph 11.9, Agreement 5.1 and her name should remain on the Great Lakes Region 5.1 seniority list. Therefore, the Company has declined the Brotherhood's request.

FOR THE BROTHERHOOD:

(Sgd) TOM McGRATH
National Vice-President

FOR THE COMPANY:

(Sgd) J.P. GREEN
for: Assistant Vice-President
Labour Relations

There appeared on behalf of the Company:

M. M. Boyle	- Labour Relations Officer, Montreal
W. W. Wilson	- Director, Labour Relations, Montreal
S. F. McConville	- Labour Relations Officer, Montreal
M. M. Sutton	- Secretary to the Superintendent, Toronto
J. C. Graham	- Observer

And on behalf of the Brotherhood:

T. N. Stol	- Regional Vice-President, Toronto
------------	------------------------------------

AWARD OF THE ARBITRATOR

In this matter the burden is upon the Brotherhood to establish that the Company has violated the Collective Agreement. Article 11.9 of Collective Agreement 5.1 provides in part as follow:

11.9 ...

An employee who is promoted on or after July 1, 1978, to a permanent non-schedule, official or excluded position with the company, or its subsidiaries, shall continue to accumulate seniority on the seniority list from which promoted for a period of two (2) consecutive years. Following this two-year period in such capacity, such employee shall no longer accumulate seniority but shall retain the seniority rights already accumulated up to the date of his or her promotion.

...

It is common ground that the promotion of Ms. Sutton was effective September 1, 1978. The Union submits that Article 11.11 should govern. It provides:

11.11 The name of an employee transferred with his work from a staff covered by this agreement to a staff not covered by this agreement, shall be removed from the seniority list.

It is not necessary, for the purposes of this grievance, to fully reconcile the provisions of Articles 11.9 and 11.11. Suffice it to say that the Arbitrator is satisfied, on the balance of probabilities, that the circumstances of Ms. Sutton's promotion fall squarely within the specific provisions of Article 11.9. I am satisfied that on the whole her circumstances are better described as a "promotion" rather than as a "transfer with her work". The material establishes beyond dispute that the job content of her position following her promotion was significantly different from what it had been prior, notwithstanding that certain functions remained the same. In these circumstances I am persuaded that Article 11.9 of the Collective Agreement governs.

There being no violation of the Collective Agreement disclosed, the grievance must be dismissed.

15 April 1988

(SGD) MICHEL G. PICHER
ARBITRATOR