CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1995

Heard at Montreal, Thursday, 11 January 1990

Concerning

CANPAR
(CP EXPRESS & TRANSPORT)

And

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

Employee Eric Neron was refused the right to displace a junior employee after his position of driver representative in the are of Laval was abolished.

Employee Eric Neron made a request to displace Andr, Vicaire who has less seniority than him in his local seniority group.

The Company refused his demand, claiming that he must displace the junior employee who is at the bottom of the seniority list of the Company.

UNION'S STATEMENT OF ISSUE:

The Union and the grievor claim that employee Eric Neron had the right to request that an employee junior to him be displaced. Consequently, the Company's refusal is a violation of Article 5.3.1 of the Collective Agreement.

Therefore the Union requests that employee Eric Neron be assigned to the route of his choice and be permitted to displace Andr, Vicaire or any other employee who has less seniority than the grievor in his local seniority group. The Union also claims that employee Eric Neron be reinstated with full compensation (including interest) and benefits for any loss in salary that occurred or may have occurred, such as overtime rate of pay, etc., since his position was abolished on July 7, 1989.

The Company asserts that the grievance ought to be dismissed because Article 5.3.1 of the Collective Agreement was meant to say "the junior employee of the Company" and not "any employee junior to the grievor".

FOR THE UNION:

(SGD) J. J. BOYCE
GENERAL CHAIRMAN

There appeared on behalf of the Company:

G. Gagnon	Counsel, Montreal
J. G. Cyopeck	Vice-President and Assistant General Manager, Toronto
R. Mosey	Vice-President, Administration, CP Truck, Toronto

And on behalf of the Union:

K. Cahill	Counsel, Montreal
J. J. Boyce	General Chairman, Toronto
M. Gauthier	Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

The pertinent facts in this grievance are not in dispute. The grievor was employed for four years as a driver representative. He delivers parcels by truck in the suburbs of Montreal. On July 7, 1989, the Company informed the grievor that his Laval delivery route had been eliminated. He was then offered a choice of three other routes which were vacant because of the summer holiday schedule. Mr. Neron filed a grievance that same day alleging that the Company had violated the Collective Agreement by refusing his the right to displace the junior employee of his choice, i.e. Mr. Andr, Vicaire.

In support of its position the Union cites Article 5.3.1 which reads as follows:

> 5.3.1 An employee whose position is abolished or who is displaced from his position must displace, within 2 working days, a full-time junior employee in his local seniority group for whose position he is qualified. An employee who fails to comply with said time limit shall not have the right to return to service by displacing a junior employee.

Counsel for the Union claims that this Article gives to the employee the right to choose the position which he wishes to occupy, provided that the employee whom he wishes to displace has less seniority and that the employee who is exercising the right of displacement possesses the requisite qualifications. She draws to the Arbitrator's attention certain principles of arbitration to the effect that when a collective agreement gives an employee whose position is abolished the right to displace another junior employee, without elaborating on the selection procedure, there exists a presumption that the employee has the right to choose the position into which he or she wishes to displace or, and this is the same thing, to designate the junior employee whom he or she is going to displace. (Re Maloney Electric Corp. (1985) 22 L.A.C. (3d) 170 (Picher); Re Canadian General Electric Co. Ltd. (1950) 2 L.A.C. 480 (Laskin))

Moreover, according to Counsel for the Union, Mr. Neron's position was abolished on July 7, 1989. She submits that he had, therefore,

the right to choose to displace Mr. Vicaire, a junior driver representative, who was a clerk on a delivery route that the grievor found desirable. It is agreed that Mr. Neron was fully qualified for this position. In the light of these facts, the Union is asking the Arbitrator to find that the Company has violated Article 5.3.1 of the Collective Agreement, to order that Mr. Neron be allowed to displace Mr. Vicaire, or any other junior employee of his choosing, and to order compensation for the grievor for all loss of salary, including overtime, given the Company's refusal to grant Mr. Neron his choice of displacement.

Counsel for the Company argues that Article 5.3.1 does not apply in the circumstance of the instant dispute. The Company emphasizes that Article 5.3.1 of the Collective Agreement deals solely with abolished positions. According to its Counsel, the elimination of a route, or a restructuring of routes due to seasonal fluctuations, does not constitute an abolition of positions in the sense of Article 5.3.1. He maintains that an employee's right to be responsible for a particular route and his right to hold a position are two different concepts under the terms of the Collective Agreement. To this effect, he cites Article 5.2.14, which reads as follows:

> 5.2.14 NUMBER ROUTES
> Regular numbered routes will be established. Each regular numbered route will be assigned to a Driver Representative, on a continuing basis.
>
> This does not preclude the Company from making adjustments to routes due to fluctuations of traffic.
>
> An employee removed from his/her regular route will be returned immediately upon reestablishment of said route.
>
> Drivers will be assigned the route they hold on the date of ratification.
>
> The above would not be construed as limiting the ability of an employee to bid on a Driver Representative bulletin.
>
> These bulletins will not be identified by numbered run.

Counsel for the Company explains that this article was added to the agreement in 1986, in response to a request by the Union which sought to obtain for its members who were driver representatives, a certain right of ownership to their routes. He emphasizes, however, that the establishment of numbered routes has no significance for job bulletining purposes. In other words, according to the Company, a route is not a position. The assignment of a route is never bulletined and remains at all times a discretionary decision of the employer, subject only to the terms of Article 5.2.14.

The Arbitrator must accept the position of the Company. In light of the terms of Articles 5.3.1 and 5.2.14, it appears clear that the parties agreed not to include the right to a particular route among the rights and obligations which constitute a position. The evidence establishes that since the first Collective Agreement in 1977, the

establishment or elimination of a route was never treated as the same as the assignment or abolishment of a position within the terms of Article 5.3.1. That is to say that throughout the duration of several collective agreements the application of the terms of Article 5.3.1 conformed to the position of the Company in the instant case and has never been the subject of a grievance.

Furthermore, it is useful to note that Article 5.3 of the Collective Agreement is entitled "Reduction in Staff". The parties are agreed that there was no reduction in staff in July, 1989.

It seems evident to the Arbitrator that the Company's position is justified. When Mr. Neron was informed that his delivery route would be eliminated July 7, 1989, his position was in no way abolished. He was, therefore, subject to be assigned to a new route according to the decision of the Company. He retained his priority right to his old route if and when it was re-established, under the terms of Article 5.2.14.

For these reasons, the Arbitrator must conclude that the Company did not violate Article 5.3.1 of the Collective Agreement in its treatment of Mr. Neron. The grievance must therefore be dismissed.

January 12, 1990 (Sgd) MICHEL G. PICHER
ARBITRATOR