

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2063

Heard at Montreal, Thursday, 11 October 1990

Concerning

CP EXPRESS & TRANSPORT

And

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Claim for compensation for Ron Brault, Calgary, Alberta, for all time held out of service contrary to the seniority provisions of the Collective Agreement.

JOINT STATEMENT OF ISSUE:

On or about January 22, 1990, the Company advised Ron Brault that his bulletin position was being cancelled. The grievor exercised his seniority and bumped into the claims clerk position that same day. On or about January 26, 1990, at 4:30 p.m., the Company advised the grievor that he was disqualified from the claims clerk job. There was no supervisory staff at work on Friday night. On the next working day, Monday, January 29, 1990, the grievor advised the Company how he wished to exercise his seniority bumping rights. The Company, by letter dated February 14, 1990, informed the grievor that his seniority rights were being removed.

The Union's position is that the grievor's seniority rights were improperly removed and he should be returned to work with full seniority and compensation. The Company has since returned the grievor to work with full seniority; the only issue outstanding is compensation to the grievor for time off work. The Company has denied the Union's request.

FOR THE UNION:

(SGD.) J. J. BOYCE  
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) B. F. WEINERT  
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

B. F. Weinert                      Director, Labour Relations, Toronto

And on behalf of the Union:

J. J. Boyce                      General Chairman, Toronto

R. Brault

Grievor

AWARD OF THE ARBITRATOR

I am satisfied, on the basis of the material before me, that the grievor did comply with the requirements of Article 7.3.1 of the Collective Agreement, in that he attempted, in good faith, to exercise his seniority to bid on a job bulletin on January 26, 1990. In fact his written memorandum did not reach the Company's supervisor until the following working day, January 29, 1990 because there were no supervisors on site at the time he attempted to deliver it on the evening of the 26th. In the circumstances the Company did not have any basis to deprive the grievor of his seniority or to hold him out of work.

The grievor's claim for compensation is in respect of the period from February 26 to April 29, 1990. It is not disputed that prior to that time he was not at work by reason of a medical disability. The material filed satisfies the Arbitrator, however, that when the Company and the Union reached their agreement to return the grievor to work on April 4, 1990, reasonable efforts were made to contact him, and these were not successful. It appears that it was after the issuing of a letter on April 17, 1990 that Mr. Brault was located, and returned to work effective April 24. In these circumstances the Arbitrator is satisfied that his claim for compensation must, as the Company submits, be limited to the period February 26 to April 4, 1990.

For the foregoing reasons the grievance is allowed, in part. The grievor shall be compensated for all wages and benefits lost as a result of being held out of service from February 26 to April 4, 1990.

12 October 1990

(Sgd.) MICHEL G. PICHER  
ARBITRATOR