CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2206
Heard at Montreal, Wednesday, 13 November 1991
concerning
CANPAR
(CP EXPRESS & TRANSPORT)
and
TRANSPORTATION COMMUNICATIONS UNION
DISPUTE:
The refusal by the Company to allot the proper annual vacation to employee Milt Grolla, Saskatoon, as per Article 13 of the CanPar Agreement.
JOINT STATEMENT OF ISSUE:
January of 1991, the annual vacation list was posted and although employee Milt Grolla had 10 years of continuous employment relationship with the Company, employee Milt Grolla is denied the 4 weeks holidays due to a dismissal of approximately 7 months in 1987, later reinstated by the Arbitrator with no loss of seniority.
The Union filed a grievance, maintaining employee M. Grolla had fulfilled all of the requirements of Article 13 and should receive the 4 weeks as related in that Article.
The Company has denied the Union's request.
FOR THE UNION:
FOR THE COMPANY:
(SGD.) J. J. BOYCE
(SGD.) P. D. MacLEOD
SYSTEM GENERAL CHAIRMAN
DIRECTOR, HUMAN RESOURCES
There appeared on behalf of the Company:
P. D. MacLeod
Director, Human Resources, Toronto
And on behalf of the Union:
J. Crabb
Executive Vice-President, Toronto
M. Gauthier
Vice-President, Montreal

AWARD OF THE ARBITRATOR

In CROA 1713 the Arbitrator ordered the reinstatement of Mr. Grolla into his employment with a reduction of demerits. The final sentence of the penultimate paragraph reads as follows:

... For these reasons the grievor's record shall be amended by the removal of the forty-five demerits imposed, and he shall be reinstated forthwith into his employment without compensation, and without loss of seniority.

The above direction resulted in an effective suspension of the grievor for a period of seven months in 1987. Subsequently, the Company declined to treat that period of time as cumulative compensated service for the purposes of assessing Mr. Grolla's vacation entitlement.

Vacation entitlement is dealt with under the following provisions of the collective agreement:

13.4

Effective January 1, 1990, an employee who, at the beginning of the calendar year, has maintained a continuous employment relationship for at least 10 years and has completed at least 2,500 days of cumulative compensated service, shall have his vacation scheduled on the basis of one working day's vacation with pay for each 12- days of cumulative compensated service, or major portion thereof, during the preceding days or 8% of previous year's gross annual earnings, which ever is greater.

...

13.7

Time off duty account bona fide illness, injury, to attend committee meetings, called to court as a witness, or for uncompensated jury duty, not exceeding a total of 100 days in any calendar year, shall be included in the computation of service for vacation purposes.

Although orders of reinstatement without compensation often include the notation ``and without benefits'', that phrase was not included in the remedial order in the instant case. Lest there be any doubt, however, it is generally understood that loss of compensation is meant to include both wages and benefits.

There is nothing in the language of CROA 1713, therefore, to support the Union's position that the Arbitrator intended that the grievor should suffer no loss of benefits, to the extent that benefits are tied to cumulative compensated service. However, should a particular benefit be predicated solely on seniority, the grievor would be protected in respect of that benefit. There is, in the instant collective agreement, a distinction to be drawn between seniority and cumulative compensated service. As is plainly evident from the language of articles 13.4 and 13.7 of the collective agreement the parties have linked an employee's vacation entitlement to cumulative compensated service, and have specifically addressed those situations where service is interrupted without any deemed interruption in the computation of service for vacation purposes. They have not included periods of suspension as deemed cumulative compensated service within the meaning of article 13.7, nor within any other provision of the collective agreement.

In the result, the Arbitrator is satisfied that the interpretation of the award and of article 13.4 advanced by the Company is correct. If the cumulative compensated service of Mr. Grolla was not 2,500 days at the time of his claim for vacation, taking into account that his seven month suspension is to be deducted in the computation of cumulative compensated service, he was not entitled to the period of vacation claimed. As the specific evidence with respect to the computation of that time was not put before the Arbitrator, the matter is remitted to the parties, with the Arbitrator retaining jurisdiction in the event of any dispute between them as to the appropriate method of computation.

November 15, 1991

(Sgd.) MICHEL G. PICHER

ARBITRATOR