CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2265
Heard at Montreal, Wednesday, 15 July 1992
concerning
CANADIAN NATIONAL RAILWAY COMPANY
and
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DISPUTE:
Claim on behalf of Mr. D. Durand, Mechanic `A', and for a declaration that he was wrongfully removed from his bid position.
JOINT STATEMENT OF ISSUE:
In May of 1987, the grievor bid for, and was awarded, the position of Mechanic `A' in the axle room of the Capreol Work Equipment Shop. In August of 1989 the grievor was advised by the Company that henceforth he would no longer be working in the axle room but would be moved around the shop floor to carry out various duties at various locations.
The Brotherhood contends: 1) That the Company violated Article 15 of Agreement 10.1 and Article 3 of Agreement 10.3 by involuntarily removing the grievor from his bid position. 2) That by removing the grievor from the axle room in August of 1989, and requiring him to perform different duties on the shop floor, the Company in fact created a new Mechanic `A' position. 3) That the Company violated Article 15 of Agreement 10.1 and Article 3 of Agreement 10.3 by not bulletining this new position. 4) That the Company violated Article 15 of Agreement 10.1 and any other applicable provision of the collective agreement, by requiring the grievor to accept this position. 5) That the Company violated Article 8.8 of Agreement 10.1 by removing the grievor from the axle room and, thereby, denying him the possibility of taking part in the distribution of overtime worked in the axle room.
The Brotherhood requests: That Mr. Durand be returned to his bid position and that he be compensated for all overtime lost as a result of this matter.
The Company denies the Brotherhood's contentions and declines its requests.

FOR THE BROTHERHOOD:
FOR THE COMPANY:
(SGD.) R. A. BOWDEN
(SGD.) M. M. BOYLE
SYSTEM FEDERATION GENERAL CHAIRMAN
for: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS
There appeared on behalf of the Company:
D. C. Gignac
System Labour Relations Officer, Montreal
R. Lecavalier
Counsel, Montreal
D. C. St. Cyr
Manager, Labour Relations, Montreal
M. S. Hughes
System Labour Relations Officer, Montreal
N. K. Colasimone
General Supervisor, Repair Facilities, Capreol
N. Jeaurond
Observer
And on behalf of the Brotherhood:
D. A. Brown
General Counsel, Ottawa
R. A. Bowden
System Federation General Chairman, Ottawa
P. Davidson
Counsel, Ottawa
J. Rioux
General Chairman, Grimsby
A. Trudel
General Chairman, Chomedy

AWARD OF THE ARBITRATOR

The Brotherhood's claim is made on the basis of the application of article 15 of agreement 10.1 and article 3 of agreement 10.3. Article 3.4 of collective agreement 10.3, which governs the situation at hand, provides as follows:

3.4

Bulletins will show classification or position (if temporary, the expected duration), Group number for Machine Operators, the Area(s) or, where practicable starting times and the Headquarters location where the employee(s) will normally be expected to work, rate of pay and living accommodation, if any.

The material before the Arbitrator establishes that the special bulletin issued in May of 1987, under which the grievor was appointed, described the position as Mechanic `A'. It indicated the location to be the Capreol Work Equipment Shop with hours of work from 06:30 to 15:00 hours and Saturday and Sunday as rest days. With respect to qualifications, the bulletin states:

Power Trains:

Must be knowledgeable in the repair and rebuild of axles, differentials and transmissions (hydraulic and mechanical), etc.

The position of the Brotherhood is that the position so bulletined effectively involved assignment to a permanent position in the axle room, where all drive train work is performed. It submits that by removing the grievor from work in the axle room, and reassigning him to more general work on the shop floor, the Company effectively violated the bulletining provisions of the collective agrement, that it in effect created a new Mechanic `A' position without properly bulletining it, and that it wrongfully deprived Mr. Durand of access to overtime which he would have otherwise worked in the axle room.

The language of article 3 of collective agreement 10.3, as well as that of other provisions of the same agreement, raises serious doubts about the merits of the Brotherhood's claim. Article 3.4 speaks in terms of "classification or position", while article 3.6 speaks in terms of "... an employee who has applied for a position ...". Various parts of the collective agreement speak in terms of Mechanic `A' as a position. For example, article 2.15 provides, in part: "to qualify for the position of Mechanic `A' the applicant must have successfully completed the Mechanic `B' training program ...". Article 5.1 deals with classifications, and lists a number of titles, including "Mechanic `A'".

The thrust of the Brotherhood's position is that the position bulletined was not that of Mechanic `A', but rather "Mechanic `A' -- Drive Train", and that the grievor is therefore entitled to maintain his position in the axle room. It is not disputed that the work equipment facilities at Capreol involve a number of sections, including the hydraulic shop, a machine shop, a welding shop, an engine rebuild area, power trains and an electrical shop. Mechanics are also assigned as general mechanics with broad trouble shooting and repair responsibilities to maintenance of way equipment on the shop floor. Persons fulfilling all of the above functions are generally referred to as "Mechanic `A'", and no other position or classification can be gleaned from the terms of the collective agreement.

The purpose of a provision such as article 3.4 is to provide to employees a reasonable basis of information to assist in their decision as to whether to apply for a bulletined position. There is nothing within the provisions of article 3.4, however, which required the Company to specify that the work assignments would necessarily be limited to the axle room, or to drive train work. The fact that it did so does not, in the Arbitrator's view, constitute the creation of a new classification or position beyond those which are reflected within the general language of the collective agreement, and are more specifically listed within article 5.1, which specifically lists the classifications for the purposes of the collective agreement. In the circumstances it is difficult to reject the position of the Company that the work equipment shop constitutes the headquarters for a position of Mechanic `A' for the purposes of article 3.4 of the collective agreement.

Boards of arbitration have long recognized the discretion of management to assign work within general work classifications. When the language of a collective agreement does not itself contain a job description, arbitrators are loathe to conclude that an employee can claim permanent attachment to any particular job or assignment within a classification. In an early case, which has been followed, Judge Reville expressed the general principle as follows:

These decisions are in keeping with the principle expressed in a vast number of arbitration cases that, where an agreement sets out certain job classifications but contains no job descriptions relating to these or any other classifications, there is nothing to cut down the right of the Company to control its operations and assign work. ... In the absence of job descriptions freezing the duties of a job classification, an employee has no proprietary rights in any particular job or in any particular bundle of job duties. (Canada Bread Co. Ltd. (1965) 16 L.A.C. 202 at p. 206 and see, generally, Brown & Beatty, Canadian Labour Arbitration, 5-2200.)

In the instant case the Brotherhood has not directed the Arbitrator to any provision of the collective agreement which would support the conclusion that the Company did not have the discretion to change the work assignment of Mr. Durand while maintaining him within the general classification of "Mechanic `A'". There is, moreover, no provision within the terms of article 3.4 of collective agreement 10.3, or of the job bulletin itself, upon which he can claim a right of ownership to a position within the axle room.

For all of these reasons the grievance must be dismissed.

July 17, 1992

(Sgd.) MICHEL G. PICHER

ARBITRATOR