CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2288
Heard at Montreal, Wednesday, October 14, 1992
concerning
VIA RAIL CANADA INC.
and
CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS
EX PARTE
DISPUTE:
Spareboard employees at Halifax were unjustly removed from the Employment Security List, contrary to Article 7 of the Supplemental Agreement, the Special Agreement and calling procedures in effect at the time.
BROTHERHOOD'S STATEMENT OF ISSUE:
On or about September 18, 1990, the Corporation reduced the spareboard (Agreement No. 2) at Halifax resulting in the employees being placed on Employment Security (ES).
On or about October 19, 1990, the 20 employees were given written notification that, assuming that they had exhausted their seniority on their own seniority group, they were subject to be called to displace any employee with less than four years of service holding a permanent position on the System in either Collective Agreement 1 or 2.
Shortly thereafter they were called, supposedly for existing vacancies or to displace. The Brotherhood claims that the employees were not called in accordance with the calling procedures in place at the time and were removed from ES status contrary to Article 7 of the Supplemental Agreement and the Special Agreement.
The Corporation claims there is no violation of any of the aforementioned agreements or procedures and are unable to provide an appropriate explanation of the procedures followed.
FOR THE BROTHERHOOD:
(SGD.) T. N. STOL
NATIONAL VICE-PRESIDENT
There appeared on behalf of the Corporation:
M. St-Jules
Senior Negotiator & Advisor, Labour Relations, Montreal
D. S. Fisher
Senior Officer, Labour Relations Montreal
C. Pollock
Senior Officer, Labour Relations Montreal
J. R. Kish
Senior Advisor, Labour Relations, Montreal
C. Thomas
Human Resources Officer, Montreal
D. Helpateau
Supervisor, Employee Services, Montreal
And on behalf of the Brotherhood:
G. T. Murray
Regional Vice-President, Moncton
T. A. Barron
Representative, Moncton
F. Bisson
Local Chairperson, Montreal, Witness
A. Della Penna
Local Chairperson, Montreal, Witness
D. Boisvert

Financial Secretary, Montreal, Witness

AWARD OF THE ARBITRATOR

The facts giving rise to the dispute are not in substantial contention. In the spring of 1990 a number of employees who enjoyed employment security status were called to serve on the Agreement No. 2 spareboard at Halifax for the summer season. Subsequently, on September 18, 1990 when the spareboard was reduced, the employees in question reverted to their employment security status. Some thirty days later they received a letter advising them that their employment security status was being maintained, and that they might be required to displace employees with less than four years of service to further protect their employment security. The letter to the employees reads as follows:

Upon being released from the spareboard effective September 18, 1990, your employment security status will be protected pending a determination of whether work would be available to you in Agreements No. 1 and No. 2 across the system, in accordance with the following procedures:

Assuming you have exhausted your seniority in your own seniority group, your name will be placed on the Employment Security List and you will be subject to be called to displace any employee with less than 4 years of service holding a permanent position on the System in either Collective Agreements No. 1 or No. 2, in the following manner:

(a)

In seniority order for positions under Collective Agreement No. 1 at your terminal

(b)

In inverse seniority for positions under Collective Agreement No. 1 on your region

(c)

In inverse seniority from the Employment Security List for positions off your region in Collective Agreements No. 1 or No. 2

NOTE:

An employee who is called to displace on a position and declines such position, will forfeit their employment security status and will be entitled to weekly layoff benefits, if the employee satisfies the eligibility provisions of the applicable agreement.

Your contact person with respect to the above procedure is Cheryl Thomas, Officer, Human Resources at (902) 422-8730, message at (902) 422-8733

The instant grievance was filed on October 26, 1990. At that time none of the employees in question had been compelled to displace in the manner described within the letter of October 19, 1990. Indeed, the material before the Arbitrator confirms that they were never required to do so. Rather, the employees were subsequently called upon to fill vacancies outside their region, and when they declined to do so were deemed to have lost their employment security.

The application of the Special Agreement, the Memorandum of Agreement and related understandings between the parties with respect to the obligations of employees to protect their employment security status, and the calling procedures implemented by the Corporation have been the subject of much consideration by this Office (CROA 2074, 2107, 2215). Given the importance of those issues to the parties, it is trite to say that any disputes arising with respect to these issues must be dealt with carefully, and in accordance with the procedures of this Office. Before me the Corporation objects that the letter of October 19, 1990 was never implemented, and therefore never adversely affected the employees who received it. On that basis it submits that the grievance cannot succeed.

In the Arbitrator's view there is merit to that submission. It is common ground that the subsequent loss of employment security by the employees who are the subject of this grievance resulted from the application of the Corporation's calling procedures, and not as a result of their being required to displace in accordance with the letter of October 19, 1990. While the Brotherhood seeks to characterize the dispute differently, arguing that in effect the employees were denied the right to exercise their seniority at the conclusion of their spareboard service on September 19, 1990, the grievance document itself, dated October 26, 1990, does not make any specific claim on behalf of any employee with respect to the exercise of such rights. Rather, it makes general reference to the fairness of the procedure followed by the Corporation. The grievance document reads, in part, as follows:

In response to this grievance, to be fair to those employees who were on the spareboard up to September 19, 1990, we would ask that you allow a 10 day period that these people may exercise their seniority, after advising them of the period and what they are required to do.

An alternative to this would be to allow the affected employees to remain as and where they are, since they weren't informed that they had to bump in both agreements.

This lack of notice to either (or both) the Union and/or employees in advance, about your applications or either the Special Agreement or Agreement No. 2, or new procedures you wish to follow, should not result in any employee being detrimentally affected, nor any of their options closed.

We, Local 333 would like you to respond to this grievance at your earliest convenience as employees are currently being adversely affected due to not knowing they could and should have bumped, in either Agreement No. 1 or No. 2, upon being released from the spareboard on September 19, 1990.

The records of this Office disclose that at the time in question the parties were in ongoing discussions with respect to the obligations of employees recalled to perform temporary or seasonal duty, with respect to maintaining their employment security status at the end such assignments. The position being taken at that time by the Corporation, and sustained by this Office in CROA 2107, was to the effect that employees in that circumstance were compelled to exercise their seniority in a manner consistent with the procedure described in the letter of October 19, 1990. The award of the Arbitrator in CROA 2107 reads, in part, as follows:

The Arbitrator is satisfied that employees on employment security who are recalled to perform temporary or seasonal duty, must, prior to resuming their employment security status, exercise their seniority to displace any employee with less than four years' seniority holding a permanent position on the System in either Collective Agreement No. 1 or No. 2 prior to resuming their employment security status. That is consistent with the intention of Article 7.2 of the Supplemental Agreement, the specific provisions of which must be interpreted as qualifying the normal application of Article 13 of the Collective Agreements.

The thrust of the Brotherhood's position is that if the employees had been advised by the Corporation that they must exercise their seniority in either collective agreements 1 or 2 locally, at the conclusion of their spareboard service, they might have sheltered themselves from their subsequent purported loss of employment security status when they were called to take positions in another region.

For the purposes of this award the Arbitrator makes no comment on the legitimacy of the loss of employment security by the employees in the subsequent calling procedure. It is sufficient to say that the Corporation was under no obligation to advise the employees of their obligation to exercise their seniority rights at the conclusion of their spareboard service (although it could clearly not have mislead them in that regard). It is for the employees to know their collective bargaining rights and obligations, and for the Brotherhood to advise them in the event of any uncertainty. In the circumstances, none of the employees concerned made any request to exercise their seniority rights at the conclusion of their spareboard service. Most significantly, none of the grievors lost their employment security status because of anything done by the Corporation in pursuance of the letter of October 19, 1990, which is the cause of the grievance. For the reasons related, it is also clear that they were not denied the right to exercise their seniority in the manner described in CROA 2107.

Insofar as the Statement of Issue purports to allege a violation of the rights of the employees with respect to their ultimate removal from employment security some months following the grievance, that is an issue which cannot be dealt with within the framework of the instant grievance. It should be stressed, however, that the result of the instant award is clearly without prejudice to the rights of the grievors in respect of any timely and unresolved grievances relating directly to the loss of their employment security status as a result of the application of the Corporation's calling procedures. If, for example, it can be demonstrated that their case falls within the principles of CROA 2215 or CROA 2289, they may ultimately be found to be entitled to the relief described in those awards.

For the foregoing reasons the Arbitrator sustains the position of the Corporation that the letter of October 19, 1990 did not prejudicially impact the grievors, and was not the cause of their subsequent purported loss of employment security status. For these reasons the grievance must be dismissed.

October 16, 1992

(Sgd.) MICHEL G. PICHER

ARBITRATOR