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CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2504

Heard in Montreal, Tuesday, 12 July 1994
concerning
CANADIAN PACIFIC LIMITED

and
TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE :

Mr. N. Bourgeois's right to his choice of annual vacation in accordance with article 14 of the collective agreement.

UNION'S STATEMENT OF ISSUE:

On January 24, 1992, Mr. N. Bourgeois submitted his choice of annual vacation in accordance with article 14.11 of the collective agreement.

A more senior employee, from another annual vacations calendar, submitted the same dates.

The Union maintains that the choice submitted by N. Bourgeois had priority.

The Company had denied the grievance.

FOR THE UNION:

(SGD.) D. DEVEAU

EXECUTIVE VICE-PRESIDENT

There appeared on behalf of the Company:

C. M. Graham - Labour Relations Officer, Montreal

D. J. David - Labour Relations Officer, Montreal

And on behalf of the Union:

R. Pagé - Assistant Vice-President, Montreal

R. Paquette - Local Chairman, Montreal

AWARD OF THE ARBITRATOR

The position pleaded by the Union is based on its submission that the grievor, Mr. N. Bourgeois, should have preference in respect of his choice for vacation scheduling, as a storeperson at St. Luc Stores, because he was part of the vacation calendar for that location when he made his election. It is common ground that a more senior employee, Mr. L. Prenovost, who was an Angus Shop employee at the time he made his election, was transferred to the St. Luc Stores, and was given priority over Mr. Bourgeois in respect of the selection of annual vacation dates.

The grievance turns on the application of article 14.11 of the collective agreement, which provides as follows:

14.11 Applications for vacation from employees filed between December 15th of the previous year and January 31st shall, insofar as it is practicable to do so, be given preference in order of seniority of the applicants. Such applicants will have preference over later applicants. Applicants will be advised in February of the dates allotted them and, unless otherwise mutually agreed, employees must take their

vacation at the time allotted.

In the case at hand, in the Arbitrator's view, it is significant that there is no reference in the collective agreement to bidding by vacation calendars. It does appear, however, that on occasion employees displacing from one location to another, onto a different vacation calendar, have not been given preference, even though they have been more senior. It seems that this is sometimes done due to constraints of practicability and the timing of employee transfers, given the nature of planning which goes into both the scheduling of relief, from the employer's point of view, and the booking of vacation arrangements, from an employee's point of view.

In the case at hand it cannot be said, in my opinion, that Mr. Prenovost was a "later applicant" than Mr. Bourgeois. It is common ground that both employees made their vacation elections in a timely fashion prior to January 31st., albeit at different locations. In such a circumstance, in my view, bearing in mind the importance of seniority as a concept within the collective agreement (re Tung-Sol of Canada Ltd., (1964). 15 L.A.C., 161 (Reville)), the Arbitrator is of the view that the position of the Company is preferable to that advanced by the Union. Seniority rights should not be unduly limited absent clear language within the terms of the collective agreement. In my view, if the parties had intended a factor other than general seniority to govern in resolving the competing rights of employees in respect of vacation scheduling, they would have done so expressly. An arbitrator should not lightly truncate or disregard any collective agreement right based upon the seniority of an employee. In the case at hand there is no language in the collective agreement to justify such a departure. In the result, I am satisfied that the Company was correct in giving preference in order of seniority to Mr. Prenovost, the senior of the two employees, in respect of vacation scheduling awarded to him and to Mr. Bourgeois in July and August of 1992. For these reasons the grievance must be dismissed.

15 July 1994

(sgd) MICHEL G. PICHER
ARBITRATOR