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CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2516

Heard in Montreal, Tuesday, 13 September 1994

concerning

Canadian National Railway Company

and

Brotherhood of Maintenance of Way Employees

DISPUTE:

Appeal of seniority on behalf of Mr. A. Bruyère, Field Maintainer, displaced by Mr. G. Hancherow.

JOINT STATEMENT OF ISSUE:

Mr. Bruyère was displaced by Mr. Hancherow on January 9, 1989 from a temporary Field Maintainer's position on Gang 138 at Vancouver.

The contention of the Union is that Mr. Hancherow had no seniority in this classification with which to displace Mr. Bruyère. Mr. Hancherow has not protected his seniority in this classification for the last number of years, including 1988.

The Union further contends that the Company has contravened Articles 2.4(a), 2.6 and 4.1 of Agreement 10.3, as well as Articles 15.5, 16.4, 16.5 and 16.6 of Agreement 10.1

The Brotherhood has requested Mr. Bruyère be financially compensated for any loss of wages incurred as a result of his displacement and that the compensation should include any lost overtime opportunities. The Brotherhood further requests that Mr. Hancherow's name be removed from the seniority lists.

The Company has denied the Brotherhood's contention and declined the Brotherhood's request.

FOR THE BROTHERHOOD: FOR THE COMPANY:

(SGD.) G. Schneider (SGD.) M. M. Boyle

System Federation General Chairman FOR: Assistant Vice-President, Labour Relations

There appeared on behalf of the Company:

N. Dionne - Manager, System Labour Relations, Montreal

L. Lagacé - System Labour Relations Officer, Montreal

A. G. Marcus- Manager Work Equipment - Western Canada, Edmonton

G. Hancherow- Witness

And on behalf of the Brotherhood:

D. Brown - Senior Counsel, Ottawa

G. D. Housch- Vice-President, Ottawa

D. Peterson - Counsel, Ottawa

AWARD OF THE ARBITRATOR

As the record reflects, Mr. Hancherow is an employee of long and distinguished service, having commenced his employment in 1952, initially in the bargaining unit of another union, and in the Brotherhood's bargaining unit since 1975. Since April of 1980, on several occasions and for varying periods of time, he has been temporarily promoted to management positions, including the position of Supervisor, Work Equipment. From 1982, when he returned to the scheduled ranks as a Lead Hand Work Equipment, he alternated between his permanent lead hand position and various temporary management jobs. It appears that he held a Lead Hand Work Equipment position at the Kamloops Work Equipment Shop, and in April of 1987 was promoted to a management position of Program

Supervisor at that location. While he held the management position the Kamloops Work Equipment Shop was closed pursuant to an article 8 notice, dated March 31, 1987 under the Employment Security and Income Maintenance Agreement. With the closure of the shop in July of 1987, Mr. Hancherow recorded his intention to displace employee E.A. McDougall in a Field Maintainer's position at Kamloops. It is agreed, however, that he remained in his management position until December of 1987.

When Mr. Hancherow sought to return to the bargaining unit in December of 1987 there was a grievance brought by the Brotherhood on behalf of Mr. McDougall, the essence of which concerned the alleged lack of seniority on the part of Mr. Hancherow to displace Mr. McDougall. As the record before the Arbitrator discloses, the Brotherhood took a position that it would not allow Mr. Hancherow to displace Mr. McDougall at that time. For reasons which it must best understand, the Company acceded to the Brotherhood and did not allow Mr. Hancherow to displace Mr. McDougall. Rather, he was placed in a temporary job of Field Maintainer at Kamloops, working out of Thornton Yard in Vancouver. Thereafter between January and May of 1988 Mr. Hancherow worked as a Field Maintainer in Vancouver and Prince Rupert. In May of the same year he was again promoted to a temporary management position in Edmonton where he worked until September 16, 1988. He then exercised his seniority to return to the ranks as a Field Maintainer headquartered at Kamloops. From September 16, 1988 to January 6, 1989 Mr. Hancherow was classified as a Field Maintainer located in Calder, Alberta, during which time he worked various temporary Field Maintainer positions. On January 6, 1989 he sought to displace Mr. Bruyère, thereby giving rise to this grievance.

The position asserted by the Brotherhood is relatively simple. While a number of articles are advanced in the joint statement of issue, its representatives submit that article 15.5 of the collective agreement operates to deprive Mr. Hancherow of the seniority to displace Mr. Bruyère effective January 6, 1989. That article provides as follows:

15.5 An employee not holding a permanent position in the classification in which he is working will forfeit his seniority in such classification coincident with a junior employee being awarded a permanent position in that classification.

The Brotherhood notes that in November of 1988 Mr. Hancherow occupied a temporary Field Maintainer position within the bargaining unit. On November 17 the Company issued a bulletin advertising a position of a permanent Field Maintainer in Edmonton. Effective December 8, 1988 that position was awarded to Mr. Bruyère, who was junior to Mr. Hancherow. The Brotherhood submits that by failing to bid on the permanent position which was awarded to Mr. Bruyère, Mr. Hancherow forfeited his seniority in that classification within the meaning of article 15.5 of the collective agreement.

The Company asserts that the seniority which Mr. Hancherow brings to the contest must, at a minimum, be the seniority which was previously challenged in the grievance concerning his claim to be able to displace Mr. McDougall. Noting that Mr. McDougall's grievance was abandoned, the Company argues that for the purposes of the instant grievance the seniority which may be exercised by Mr. Hancherow must, at a minimum, be the seniority which he

asserted against Mr. McDougall, a seniority which would be superior to that of Mr. Bruyère.

The Arbitrator has some difficulty with that position, on two grounds. Firstly, there may be many reasons why a union abandons a grievance brought by a particular employee in a dispute concerning the relative seniority of two individuals. The fact that the union might concede or abandon a dispute concerning the seniority of one employee vis-à-vis another does not, of itself, necessarily create a general abandonment of any possible claims which could be made subsequently by another employee or employees. In the circumstances, therefore, the Arbitrator cannot accept the argument of the Company to the effect that the abandonment of the McDougall grievance forecloses the grievance brought on behalf of Mr. Bruyère, or that it effectively established Mr. Hancherow's seniority for all purposes.

That is particularly true in the case at hand where, as is evident from the facts before the Arbitrator, intervening events transpired following the closure of the Kamloops Work Equipment Shop. Whatever the equities as between Mr. Hancherow and Mr. McDougall, it is clear that in November of 1988, by reason of the Company acceding to the position of the Brotherhood that Mr. Hancherow should not be able to displace Mr. McDougall, Mr. Hancherow did occupy a temporary position. When a permanent position was bulletined and successfully claimed by Mr. Bruyère, who is junior to Mr. Hancherow, the conditions precedent for the operation of article 15.5 of the collective agreement were established.

It is undeniable that effective December 8, 1988, Mr. Hancherow failed to bid on a vacancy for a position of permanent Field Maintainer, and that that position was awarded to a junior employee. In the circumstances, he must be taken to have forfeited his seniority in the classification. Having done so, I do not see how he can assert a right to displace Mr. Bruyère in the very position upon which he failed to bid, effective January 6, 1989. In the result, as between Mr. Hancherow and Mr. Bruyère, the Arbitrator must conclude that Mr. Bruyère had the seniority to hold the position in question, and that Mr. Hancherow did not have the seniority to displace him.

For the foregoing reasons the grievance must be allowed. The Arbitrator finds and declares that the displacement of Mr. Bruyère in January of 1989 was in violation of the collective agreement and directs that he be compensated accordingly for any wages and benefits lost.

16 September 1994(sgd) MICHEL G. PICHER

ARBITRATOR