

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2789

Heard in Calgary, Wednesday, 13 November 1996

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Claim on behalf of Mr. G. O'Grady (File # 14.089).

EX PARTE STATEMENT OF ISSUE

On December 31, 1994, the Canadian Atlantic Railway ceased operations. The grievor, who held a permanent Group III Operator's position at the time of the closure, subsequently assumed Employment Security (ES) status and received ES benefits. In August of 1995, Mr. T. Thibodeau, who had been on sick leave, was deemed fit to return to work and, on the basis that he was senior to the grievor as a Group III Operator, "displaced" the grievor from ES.

The Union contends that: 1.) The grievor should never have been "displaced" from his ES status; 2.) The grievor, an individual with much more than the required minimum of 8 years of cumulative compensated service, was, and continues to be, entitled to ES benefits; 3.) The Company (a) wrongfully allowed the "displacement" of the grievor to occur and (b) wrongfully withheld ES benefits from the grievor, both in violation of article 7 of the Job Security Agreement.

The Union requests that it be declared that the grievor possesses an on-going entitlement to ES benefits and that he be compensated for all financial losses (in the form of ES benefits or from any other source) incurred as a result of this matter.

The Company denies the Union's contentions and declines the Union's requests.

FOR THE BROTHERHOOD:

(SGD.) J. J. KRUK

SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

R. Martel	– Labour Relations Officer, STL&H, Toronto
G. Wilson	– Counsel, CPR, Calgary
F. DeWitt	– Manager, Administration, C.A.R., (ret'd)

And on behalf of the Brotherhood:

P. Davidson	– Counsel, Ottawa
D. W. Brown	– Sr. Counsel, Ottawa
J. J. Kruk	– System Federation General Chairman, Ottawa
D. J. McCracken	– Federation General Chairman, Ottawa
K. Deptuk	– Vice-President, Ottawa
G. O'Grady	– Grievor

AWARD OF THE ARBITRATOR

It is not disputed that as of December 31, 1994, when the Canadian Atlantic Railway ceased operations pursuant to an article 8 notice issued on August 24, 1994, the grievor, Mr. G. O'Grady, held a permanent position which was then abolished. In accordance with the terms of the Job Security Agreement, he was granted the benefit of employment security (ES), as contemplated under article 7 of that agreement. However, in August of 1995, when an employee senior to the grievor, who had been on sick leave at the time of the railway's closure, was deemed fit to return to work, the Company took the position that he should displace the grievor from ES protection.

The Arbitrator cannot find any justification within the Job Security Agreement for such a displacement. By definition, Mr. O'Grady did not then hold any active position, job, assignment or work. Absent any language within the Job Security Agreement, or within the collective agreement, which would conceptually support the possibility of an employee who is on employment security status, or who is on layoff or some other form of leave, being "displaced" by another employee, the Arbitrator can see no basis to support the interpretation or action of the Company. The concept of displacement or bumping, as it is understood in Canadian industrial relations, involves one employee taking the job or position of another, usually in a downsizing or layoff. However, the notion of an employee somehow "displacing" an employee who is inactive, on layoff, on leave or otherwise without work is counter-intuitive to the generally held concept of displacement rights. Such an unusual process could only be justified on the basis of clear and unequivocal language within the terms of a collective agreement, or of a job security agreement.

The rights of Mr. O'Grady in this case must be determined on the basis of the language of the Job Security Agreement as it affected him at the material time. There is no language in the Job Security Agreement which would support the possibility of an employee who has no job, but benefits from employment security protections, being displaced from that protection. The suggestion advanced by the Company, that the grievor might not have been entitled to employment security had the senior employee on sick leave returned to work and displaced him prior to the implementation of the job abolishments is neither here nor there for determining the rights fashioned by the parties for persons in the grievor's actual position at the time his job was abolished, within the terms of the Job Security Agreement. Those rights contain no express reference to displacement, nor any language from which such a concept can fairly be implied.

For the foregoing reasons the grievance is allowed. The Arbitrator directs that the grievor be returned forthwith to employment security status, and that he be compensated for all wages and benefits lost as a result of the Company's action.

November 16, 1996

(signed) MICHEL G. PICHER
ARBITRATOR