

CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3033
Heard in Montreal, Tuesday, 9 February 1999
concerning
ST. LAWRENCE & HUDSON RAILWAY COMPANY
and
CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)
EX PARTE

DISPUTE:

The interpretation and application of the Dorion Turn Special Agreement, Article 37A, 38, Appendix A- 4 clause (e),(f) & (g), and all relating articles as the relate to the company's action of placing Mr. Littlejohn on lay-off status at Smiths Falls, Ontario.

EX PARTE STATEMENT OF ISSUE:

Mr. Littlejohn is a non-protected employee pursuant to the provision of Article 9A of the present Collective Agreement. He successfully bid and was awarded a position as Conductor on the St Luc Roadswitcher (Assignment #3) which is an assignment working under special agreement out of St Luc Yard in Montreal.

Under the terms of the special agreement, positions on Assignment No. 3 are awarded to district 3 employees as per their district 3-seniority date. In the event no district 3 employee applies, the position is to be awarded to the senior district 2 employee applying for it.

On or about October 16, 1997 the company reduced its spareboard at Smiths Falls, Ontario. As a result, Mr. Littlejohn was removed from assignment No-3 and placed on Lay-Off status at Smiths Falls.

The Union is requesting that Mr. Littlejohn be compensated for all earnings and benefits lost as a result of his being placed on Lay-Off status at Smiths Falls.

The Company declined the Union appeal.

FOR THE COUNCIL:

(SGD.) D. A. WARREN GENERAL CHAIRPERSON

There appeared on behalf of the Company:

G. Chehowy - Manager, Labour Relations, Toronto

And on behalf of the Council:

D. A. Warren - General Chairperson, Toronto

D. Fielding - Local Chairperson, Toronto

A. Littlejohn - Grievor

AWARD OF THE ARBITRATOR

It is common ground that prior rights to road assignments and commuter assignments on the Montreal Vaudreuil-Rigaud service were retained by the Winchester Zone of District 3 for bidding purposes. Although that service would otherwise fall within the jurisdictional territory of Seniority District 2 (Quebec), by a long standing arrangement the work which is the subject of this dispute, described as the Dorion Turn, is work which is to be assigned on priority to conductors from District 3. Failing any bid from such a conductor it may be assigned to Quebec based employees from Seniority District 2.

The evidence discloses that prior to October 17, 1997 Mr. A. Littlejohn, home terminalled at Smiths Falls, held the Dorion Turn St. Luc Roadswitcher Assignment. It appears that that assignment works between St. Luc and Vaudreuil/Rigaud, occasionally performing some road switcher work on the M&O subdivision, towards Ottawa. Mr. Littlejohn held the position as the successful bidder on bulletin 018 which described assignment no. 3, also known as the Dorion Turn. As noted above, that assignment is available to Smiths Falls conductors from Seniority District 3 as a matter of priority pursuant to a memorandum of agreement which commenced in effect September 1, 1990 and reads, in part, as follows:

Effective Sept. 1, 1990, all assigned and unassigned work between De Beaujeu, Mileage 35.5, Winchester Subdivision, and Montreal St. Luc Yard will be handled as follows:

1. a) All
assigned work positions between Montreal (St. Luc Yard) and De Beaujeu, Mileage
35.5 Winchester Subdivision, will be advertised on Seniority District Nos. 2 and 3 and
applicants will be awarded to positions according to their seniority on District No. 3.
- b) If no applications are received from Seniority District No. 3 employees, the position(s)
will be awarded to the senior applicant(s) from Seniority District No. 2.

It is common ground that Mr. Littlejohn found the Dorion turn assignment attractive as he resided in the Eastern Townships of Quebec. It appears that no other employees from District 3 have evidenced the same interest in holding work on the Dorion Turn.

In September of 1997 a reduction of six conductors was made at Smiths Falls. In that exercise Mr. Patton, an employee one turn senior to Mr. Littlejohn was laid off. Although he would have had the right to exercise his seniority to displace Mr. Littlejohn on the Dorion Turn, he consciously opted to accept a lay off. In the result, Mr. Littlejohn remained in service, although he was junior to Mr. Patton. Very shortly thereafter, it appears that the Company became aware of the anomaly of Mr.

Littlejohn remaining in service as a junior employee. In its view the Dorion Turn should have been treated as an outpost assignment to Smiths Falls, and Mr. Littlejohn should have been laid off prior to Mr. Patton. In the result, shortly thereafter a further layoff was implemented, as a result of which Mr. Littlejohn was effectively forced from the Dorion Turn to Smiths Falls to be laid off effective October 17, 1997. Subsequent to that the Dorion Turn was bulletined for bid, and received no bid from any active Smiths Falls employees. In the result it was given to a Quebec based employee from Seniority District No. 2.

In the instant case the Arbitrator has no difficulty with the general principles advanced by the Company, namely that in implementing a layoff at a given location it normally lays off the junior most employees at the terminal in question, including any outpost terminals. If that were the totality of the obligations operating in this case the grievance would have little chance of success. There is, however, a further dimension which operates on the particular facts of this dispute.

For reasons which it best appreciates, the Company undertook an obligation in the memorandum of agreement effective September 1, 1990, whereby it guaranteed to the employees of Seniority District No. 3 priority access to work on the Dorion Turn. It would appear to the Arbitrator that the Company could not avoid or defeat that obligation either directly or indirectly. In the instant case, however, by laying off Mr. Littlejohn in the absence of any other District 3 employee willing to bid on the Dorion Turn, the Company effectively defeated the spirit and intention of the memorandum of agreement. While it is obviously within the prerogative of the employer to decide on a reduction of employee complement, such a reduction must be for valid business purposes and relate to a commensurate shortage of work. By denying Mr. Littlejohn the opportunity to bid on the Dorion Turn, an assignment which would be bid by no other employee from District 3, the Company in fact laid off an employee where work for that individual was plainly available and accessible to him by the specific terms of the memorandum of agreement governing the Dorion Turn. In the Arbitrator's view, when that agreement and the collective agreement are read together, the Company is foreclosed from organizing its complement of employees so as to frustrate the application of the memorandum of agreement.

In the circumstances of this case the Arbitrator is compelled to agree with the interpretation of the Council. It should be stressed, however, that the result arrived at by the Arbitrator is particular to the facts of the instant case and the special impact of the memorandum of agreement governing the Dorion Turn. For the foregoing reasons the grievance is allowed. The Arbitrator directs that the grievor be compensated for all wages and benefits lost by reason of his layoff commencing on or about October 17, 1997.

February 17, 1999

MICHEL G. PICHER
ARBITRATOR

