

CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3179

Heard in Montreal, Thursday, 11 January 2001
concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
EX PARTE

DISPUTE:

Claim on behalf of Mr. J.F. Gonyou.

EX PARTE STATEMENT OF ISSUE:

On or about January 27, 1999, the grievor was affected by a staff reduction on the Smiths Falls Seniority Territory- As a result, the grievor wished to displace an employee junior to him pursuant to the terms of article 7.10 of the Job Security Agreement. The Company refused to permit such a displacement and a grievance was filed.

The Union contends that the Company's actions are in violation of article 7.10 of the JSA. The Union requests that the grievor be compensated for all lost earnings and expenses incurred as a result of this matter.

The Company denies the Union's contention and declines the Union's request.

FOR THE BROTHERHOOD:

(SGD.) J. J. KRUK

SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

E- J. MacIsaac - Manager, Labour Relations, Calgary

And on behalf of the Brotherhood:

P. Davidson- Counsel, Ottawa

J. J. Kruk - System Federation General Chairman, Ottawa

D. W. Brown - General Counsel, Ottawa

AWARD OF THE ARBITRATOR

This grievance concerns the application of article 7.10 of the Job Security Agreement (JSA) which reads as follows:

7.10 Should a lay-off occur which does not require a notice pursuant to article 8.1 of the Job Security Agreement, the affected employee(s) shall be permitted to displace the junior employee(s) on ES status on the basic seniority territory, if any, for the duration of such lay-off. The junior employee(s) displaced from ES status as a result of the application of this provision, will be laid off and entitled to the other benefits contained within the Job Security Agreement, subject to eligibility. When senior employees are recalled to work the junior employees previously reduced from ES to lay-off status,

provided that they continue to be on lay off, shall resume their ES status.

The grievance concerns the claim of Mr. J.F. Gonyou, an employee first hired in October of 1987, who has worked exclusively in temporary positions during his entire service. He has worked variously as an extra gang labourer, truck driver, trackman, B&B labourer, bridgeman, leading track maintainer and track maintenance foreman. His work record indicates that on at least four occasions in the past he has been laid off.

At the time giving rise to this grievance Mr. Gonyou held seniority on the Smiths Falls Basic Seniority Territory (BST). It is common ground that there are a number of employees, some junior to him, who previously held permanent positions and were placed on employment security (ES) by reason of the effect of an article 8 notice. On January 27, 1999 Mr. Gonyou was affected a non TOW staff reduction change, resulting once more in his layoff. He then sought to exercise his seniority under article 7.10 to displace the junior employee on employment security. The Brotherhood took the position that notwithstanding that Mr. Gonyou was laid off pursuant to section 15.1 of the collective agreement, he was entitled, by what it submits is the plain language of article 7.10 of the JSA, to displace the junior employee on ES on the Smiths Falls BST for the duration of the lay off. It is common ground that the result of that displacement would move the junior employee in question into a laid off position. The Brotherhood submits that its position is consistent with the general notion that article 7.10 is intended to give greater lay off protections to more senior employees, and that therefore in the circumstances Mr. Gonyou should have the greater benefits of ES, rather than a junior employee.

The Company maintains that the Brotherhood's position is inconsistent with the fundamental conditions for the awarding of employment security. It stresses that among the requirements for an employee to go onto ES is that the employee in question is affected by the abolishment of a permanent position. Its representative argues that it is the understanding of the parties that only employees holding permanent positions can avail themselves of the benefits of employment security. In that regard reference is made to the decision of this Office in CROA 2720.

Upon a review of the material filed and a close examination of the provisions of the JSA, I am compelled to the conclusion that the position of the Brotherhood cannot succeed. As part of its argument the Company suggested that the Brotherhood's position would permit a displacement scenario whereby a member of the BMW bargaining unit, with relatively low seniority but sufficient cumulative compensated service (CCS), by reason of service elsewhere in the Company, to be displaced from his or her employment security situation by an employee laid off from a temporary position who might have greater seniority, but, for example, only six years of CCS. That, the Company submits, would result in an employee with less than eight years of CCS attaining employment security status, a result inconsistent with the initial threshold requirements of ES.

The Brotherhood responds that it would not seek to administer article 7.10 so as to allow any employee with less than eight years CCS to gain ES status. While the Arbitrator appreciates

the logic of that concession, it is not a concession which can fairly said to spring from the language of article 7.10. If it is a proper concession, it is out of recognition that the parties intended that no one who would not initially satisfy the conditions precedent for receiving ES should be able to do so indirectly by the operation of article 7.10 of the JSA. However, that is precisely what would result if an employee holding a position other than a permanent position is laid off and exercises his or her seniority rights to displace into the higher protections of employment security. The abolishment of a permanent position, no less than the qualification of eight years of CCS, is a clear condition precedent to any employee receiving the higher benefits of employment security. If the Brotherhood's position obtains, that condition, one of long standing in practice, endorsed arbitrarily and judicially, would no longer stand. In the Arbitrator's view it would require clear and unequivocal language within the terms of the JSA to create such a result.

For the above reasons the Arbitrator finds the interpretation of the Company to be more compelling. As a person laid off from a temporary position Mr. Gonyou could not exercise seniority under article 7.10 to indirectly achieve ES status. The grievance must therefore be dismissed.

January 15, 2001

MICHEL G. PICHER
ARBITRATOR