

CANADIAN RAILWAY OFFICE OF. ARBITRATION

CASE No. 873

Heard at Montreal, Wednesday, October 14, 1981

Concerning

CANADIAN PACIFIC EXPRESS LIMITED

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

EX PARTE

**DISPUTE:**

The question of the seniority status of Mr. W.J. McGuire.

**EMPLOYEES' STATEMENT OF ISSUE:**

Mr. McGuire, prior to his demotion, held the official position of Terminal Manager, C.P. Transport, Moncton, New Brunswick.

He was advised by C.P. Transport as of May 15th, 1981, he was being replaced as Terminal Manager and therefore, would have to revert to his former position. The Brotherhood contends Mr. McGuire lost his rights to exercise his seniority when he voluntarily went to Moncton.

The Company disagrees with the Brotherhood's claim.

**FOR THE EMPLOYEES:**

(Sgd. J. J. BOYCE

**GENERAL CHAIRMAN**

There appeared on behalf of the Company:

D. R. Smith - Director, Industrial Relations, Personnel & Administration, C.P.

Express, Toronto

B. Neill - Manager, Labour Relations, CP Express, Toronto

R. A. Colquhoun - Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

J. J. Boyce - General Chairman, BRAC, Toronto

F. W. McNeely - General Secretary-Treasurer, BRAC, Toronto

J. Crabb - Vice General Chairman, BRAC, Toronto

### **AWARD OF THE ARBITRATOR**

Mr. McGuire was hired by the Company on April 1, 1947. He began accumulating seniority on the local seniority roster at McAdam, N.B., on November 18, 1948. Subsequently, as a result of closure and amalgamation of officers, his name was transferred to the Fredericton list. His name has appeared on the seniority list for the bargaining unit at all material times, and it would appear that no protest has been made with respect to that at any time prior to the present grievance.

In 1968, Mr. McGuire was promoted to an "excepted or official" position, first at St. Stephen, N.B., and later at Moncton. It would appear that, broadly speaking, employees at St. Stephen are members of the bargaining unit, whereas employees at Moncton are not. There is no "Moncton" seniority group in the New Brunswick district (Article 6.1 of the Collective Agreement). Mr. McGuire remained however, on the employer's payroll. It is not suggested that he left the Atlantic Region.

The matter is governed by Article 6.2.6 of the Collective Agreement, which is as follows:

-6.2.6. Employees promoted to excepted or official positions with the CP Express Ltd., and employees on authorized leave of absence as outlined in Articles 4, 6.2.9, 19, 20 and 24, shall retain all their seniority rights and continue to accumulate seniority on their seniority list and their names shall be continued on such list.

Mr. McGuire was, at all material times, in an excepted or official position with the CP Express Limited. That being the case, it follows, by virtue of Article 6.2.6., that he retained all seniority rights and continued to accumulate seniority. Apart from the limitation set out in Article 6.2.5, confining seniority to the Region involved, there appears to be no limit to the exercise of seniority by someone like Mr. McGuire who, having accumulated seniority in the bargaining unit, then moves to an excepted or official position. He is then no longer a member of the bargaining unit, but he nevertheless (by reason of Article 6.2.6), continues to accumulate seniority, and retains seniority rights. The nature of the work he performs, or

(subject to Article 6.2.5), the place or places in which he performs it, has no effect on the validity of his seniority rights. Article 6.2.6 does not limit the retention of seniority rights to those whose excepted or official positions involve direct contact with the bargaining unit, or require them to work in centres where there is a local seniority group under the collective agreement. The only limitation is that the persons concerned remain employees, as Mr. McGuire did.

In Mr. McGuire's case, his move to Moncton had no effect on his rights under Article 6.2.6 of the Collective Agreement. The grievance is accordingly dismissed.

J.F.W. Weatherill

ARBITRATOR