

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 109

Heard at Montreal, Tuesday, May 14th, 1968

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

EX PARTE

DISPUTE:

Claim of Waiter R.J. Bell for payment of guarantee when held out of service for four (4) days due to the reduction and rearrangement of staff by the Company.

JOINT STATEMENT OF ISSUE:

Waiter R.J. Bell was a regular assigned waiter on assignment trains Nos. 2 and 1 between Vancouver and Winnipeg. Due to the reduction and rearrangement of staff by the Company Bell was held out of service from November 14th to November 18th, a period of four (4) days before being reassigned.

Bell claimed payment for four (4) days held for service which was declined by the Company.

In refusing to pay Bell for the four (4) days involved, the Brotherhood contends that the Company is in violation of Article 11, Clause (a) of the Collective Agreement.

FOR THE EMPLOYEES:

(Sgd.) J. R. BROWNE
GENERAL CHAIRMAN

There appeared on behalf of the Company:

T. P. James – Manager, S.D., P.C. & N.S., Montreal
J. W. Moffatt – General Superintendent, S.D., P.C. & N.S., Montreal

And on behalf of the Brotherhood:

J. R. Browne – General Chairman, Montreal

AWARD OF THE ARBITRATOR

For the Brotherhood it was contended that Waiter Bell was held out of service from November 14th to the 18th, a period of four days until the Company could remove a junior man from assignment and re-assign Bell.

In essence the submission for the Brotherhood was that the provision of Article 11 had been ignored in this instance. In other words, it was urged that seniority must prevail at all times; that if, for example, this employee, could not be immediately given an assignment to which his seniority entitled him, he should be paid for the time so lost.

Article 11 reads:

Reduction of Staff:

- (a) When it is necessary to reduce staff, this will be in the reverse order of seniority. In reducing the kitchen staff of the Dining Car, reduction will commence with lowest rated position, that is, the Fourth Cook; the next will be the Third Cook, etc.

For the Company it was contended that Waiter Bell was a member of a Vancouver crew on Trains 1-2 between Vancouver and Winnipeg.

Article 9 provides, in part, that promotion districts and home terminals as at present established will not be changed.

The method by which Vancouver and Winnipeg crews share these runs was described as follows:

From Vancouver	November	14th	Vancouver crew
“ “ “	15th	“ “	
“ “ “	16th	Winnipeg crew	
“ “ “	17th	“ “	
“ “ “	18th	Vancouver crew	
“ “ “	19th	“ “	
“ “ “	20th	Winnipeg crew	
“ “ “	21st	“ “	

On November 14, 1967, the consist of each crew in the above operation had been reduced from four to three waiters. Bell, who was the fourth waiter on the Vancouver District crew due out on November 14th was reduced because he was the junior waiter on that crew. The three waiters on the Vancouver crew due out on November 15th were all senior to Waiter Bell. On November 16th and 17th, the line was manned by Winnipeg District crews in which Promotion District Bell does not hold seniority rights. On November 18th Bell, was able through exercise of seniority, to displace a junior waiter in the Vancouver crew due out that day. It was claimed this was the first day following his reduction on November 14th that he was able, through the exercise of seniority to displace a regularly assigned junior waiter.

The foregoing indicates the difficulty the Company would experience in attempting to give an employee reduced in the manner described “instant seniority rights” The fact that trains operate over such long distances, with different home bases for the crews, undoubtedly explains why the parties agreed to the following provision being included in the existing agreement:

Article 8 – Seniority

- (1) Employees will not be paid for time lost in the exercise of seniority. An employee who has been assigned to a run will be placed in it in seniority order after expiration of layover from preceding trip.

That provision, of course, is in direct conflict with what is asked for in the Employees’ Statement of Issue, namely, payment for four days held for service.

For these reasons this claim is denied.

(signed) J. A. HANRAHAN
ARBITRATOR