

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 191

Heard at Montreal, Tuesday, December 9th, 1969

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (CP TRANSPORT)

and

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

DISPUTE:

Claim of mileage-rated driver J. Strachuk, Winnipeg, for the difference in Wages between Route 137-138 and Route 149-150 for all time held off the latter route.

JOINT STATEMENT OF ISSUE:

Employee J. Strachuk had bid on and held Route 137-138, Winnipeg-Arborg peddle Route.

By bulletin posted May 13th, 1968, Route 137-138 was cancelled May 20th and 21st, 1968, due to the Victoria Day statutory holiday.

With letter dated May 13th, 1968, employee J. Strachuk requested to use his seniority and displace employee covering Route 149-150.

On dispatch order from Mr. R.A. Reid, Senior Equipment Dispatcher, dated May 23rd, 1968, employee Strachuk was advised he must revert to Route 137-138, effective May 27, 1968.

Article 15.2 of the Schedule reads:

An employee whose position is abolished or who is displaced from his permanent position may displace a Junior employee in his local seniority group for whose position he is qualified.

The Brotherhood contends that Mr. Strachuk was free to exercise his seniority under Article 15.2 and should not have been required to revert to his original bid position.

The Company contends that Mr. Strachuk was not free to exercise his seniority under Article 15.2.

FOR THE EMPLOYEES:

(SGD.) L. M. PETERSON:
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) C. C. BAKER
MANAGER, INDUSTRIAL RELATIONS

There appeared on behalf of the Company:

C. C. Baker – Manager Industrial Relations, Vancouver

And on behalf of the Brotherhood:

L. M. Peterson – General Chairman, Don Mills
G. Moore – Vice-General Chairman, Moose Jaw
F. C. Sowery – Vice-General Chairman, Montreal
W. J. Dickinson – District Representative, Toronto

AWARD OF THE ARBITRATOR

There is no dispute as to the facts, which are set out in the joint statement of issue. The grievor's regular route was cancelled for two days, because of business requirements resulting from the Victoria Day holiday. Although it is the company's contention that article 15.2 did not apply to this situation, it nevertheless permitted the grievor to exercise his seniority and displace a junior employee on another route. There would, however, be no other justification for the displacement of the Junior man, than the application of Article 15.2. There is no express provision for the exercise of seniority in cases of "temporary" lay-offs, such as this was, unless Article 15.2 has this effect.

Article 15 deals generally with cases of reduction and increase in staff. It would appear that in this case there was a "temporary" lay-off due to the cancellation of the grievor's route for two days. In my view, it could not properly be said that this route was "abolished". It was, however, the grievor's "permanent position", and he was "displaced" from it on the days when it was cancelled. After these days, the route was not cancelled, and it was no longer necessary for the grievor to displace a junior man. Article 15.8 provides that when forces are increased, employee shall be returned to service in order of seniority. The grievor, of course was not out of service, although it may be that some other employee was as result of these events (there is no evidence as to this). The situation, after May 21, as far as the grievor was concerned, was simply that his regular assignment was no longer cancelled. It would not be appropriate, in the circumstances of this case, to say that it was a "new position" or a "vacancy", required to be posted pursuant to Article 13.1. It was the grievor's permanent job, and there was no reason why he should not then have returned to it.

Subsequent to the grievance, the parties came to an agreement as to the application of Article 15.2 in these circumstances. I do not draw from this subsequent agreement of the parties any conclusions as to the proper interpretation of the agreement as it stood at the time in question.

For the foregoing reasons, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR