

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 214

Heard at Montreal, Tuesday, May 12th, 1970

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

EX PARTE

DISPUTE:

Claim of Steward W. Basil concerning the right to exercise seniority involving a terminal position.

EMPLOYEES' STATEMENT OF ISSUE:

The terminal position in the Vancouver District is manned by a Dining Car Service Employee. Steward Basil, a senior Steward, was denied the right to exercise his seniority to acquire said position.

The Company state the position is filled by appointment and does not come within the scope of the Collective Agreement.

The Union contends that the Company are in violation of Article 8(b) of the Collective Agreement in not allowing Steward Basil to exercise his seniority to the higher rated position.

FOR THE EMPLOYEES:

(SGD.) J. R. BROWNE
GENERAL CHAIRMAN

There appeared on behalf of the Company:

J. W. Moffatt – Manager of Passenger Operations, Montreal

And on behalf of the Brotherhood:

J. R. Browne – General Chairman, Montreal

H. Paquette – Vice Chairman, Montreal

AWARD OF THE ARBITRATOR

The substantial issue which arises for determination in this case is whether the position of terminal steward does or does not come within the bargaining unit set out in the collective agreement. The scope of the bargaining unit is set out in the preamble to the collective agreement, as follows:

The Canadian Pacific Railways Company recognizes the United Transportation Union (T) as the sole collective bargaining agent with respect to wages, hours of work, and other working conditions for Dining Car Service Employees engaged in the preparation and service of food and/or beverages in Canadian Pacific meal and bar service cars on passenger trains on the Canadian Pacific Railway, excepting on cars containing beds and/or berths.

The collective agreement sets out rates of pay and other provisions relating to a number of classifications of dining, café and buffet car employees. The classification of terminal steward is not a classification expressly provided for in the agreement, although it need not necessarily follow that the classification is outside the scope of the bargaining unit. It may be noted, however, that the position is not a new one, and the silence of the collective agreement with respect to it may be some indication that it was not regarded by the parties as coming within the unit.

The classifications covered by the collective agreement are as follows: dining car stewards, café car stewards, dining car chefs, café car chefs, second cooks, third cooks, fourth cooks, pantrymen, waiters, buffet car stewards and buffet car cooks. Persons in these classifications are indeed engaged in the preparation and service of food and/or beverages in cars of the sort referred to in the preamble to the collective agreement. It may be that the preamble should be regarded as referring to the primary characteristics of their work, and that these employees would not cease to come within the bargaining unit by reason only of their performing some task ancillary to their main task, for example the drawing of supplies. This is not a matter which need be determined here. In particular, since the matter was referred to in argument, I would express no opinion as to whether it is proper to require employees in this bargaining unit to perform the work of loading and unloading linen supplies at Calgary.

The work of the terminal steward involves the checking of all feeding and bar units, including cars containing beds or berths, inspection of food supplies, supervision of the cleaning of lockers, refrigerators and the like, the checking of newly issued supplies and equipment. The work may be in many ways analogous to that of a dining car steward. Indeed, it would seem that dining car stewards act as terminal stewards from time to time, and *vice versa*. For all this, however, the jobs are not the same. Having regard to the nature of the work performed, I am unable to conclude that the terminal steward is “engaged in the preparation and service of food”, etc., in “meal and bar service cars on passenger trains”. Accordingly, it must be concluded that the position is not within the bargaining unit. Rights with respect to the position cannot, therefore, be claimed under the provisions of this collective agreement.

It should be added that the issue is not whether the position of terminal steward is appropriate for inclusion in the bargaining unit. The nature of his duties might suggest that his bargaining interests are closely allied to those of members of the bargaining unit. He does not appear to exercise managerial functions of the sort which would call for his exclusion. The relevant question, however, is simply whether the position falls within the bargaining unit as the parties have defined it, and, in the circumstances it can only be said that it does not.

It is of interest to note that article 10(b) of the collective agreement sets out certain “lines of progression”, along which promotions are to take place. The position of terminal steward is not included, suggesting again that the position was not considered to be within the unit, and in particular that the promotion now sought by the grievor was not of a sort contemplated by the collective agreement.

For all of the foregoing reasons, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR