CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 408

Heard at Montreal, Tuesday, May 8th, 1973

Concerning

CANADIAN PACIFIC LIMITED

and

TRANSPORTATION-COMMUNICATION DIVISION OF BRAC

EX PARTE

DISPUTE:

H.J. Kologie be reinstated in his former full-time Dispatcher's position account being wrongfully displaced and payment for wages lost.

EMPLOYEES' STATEMENT OF ISSUE:

On or about June 21, 1972, Mr. H.C. Firth, Diesel Co-Ordinator at Vancouver, B.C., returned to the ranks of Dispatcher on his original Seniority District, the E&N Railway, headquartered at Victoria, B.C., thereby displacing Mr. H.J. Kologie who was the junior permanent full-time Dispatcher.

Pursuant to Article 5.3(b) of the Collective Agreement, Mr. Kologie in turn displaced Mr. N.J. Savard who was the junior part-time permanent Dispatcher working in that office.

The Union's contention is that, in accordance with Article 5.4 of the Collective Agreement, Mr. Firth should have displaced Mr. Savard who was the junior permanent Dispatcher.

The Company's contention is that Mr. Kologie was the junior permanent Dispatcher and, therefore, was properly displaced.

FOR THE EMPLOYEES:

(SGD.) R. J. CRANCH

SYSTEM GENERAL CHAIRMAN

There appeared on behalf of the Company:

P. E. Timpson – Assistant Supervisor Labour Relations, Vancouver

D. V. Brazier – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

R. J. Cranch – System General Chairman, Montreal

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AWARD OF THE ARBITRATOR

In this case, the Company has raised the preliminary objection that the matter is not arbitrable, on the ground that it has not been processed to arbitration within the time provided.

The matter arose on or about June 21, 1972, when Mr. H.C. Firth Diesel Co-Ordinator at Vancouver, returned to the position of Dispatcher on his original Seniority District, the Esquimalt & Nanaimo Railway, and thereby displaced the grievor. The grievor in turn displaced Mr. N.J. Savard, the junior part-time permanent Dispatcher in the office. It was the grievor's claim that Mr. Firth ought to have displaced Mr. Savard.

Article 9 of the collective agreement then in effect provided for representations to be made by or on behalf of any employee who felt himself aggrieved or that any provision of the collective agreement had not been observed. There were no time limits set out for the presentation of a grievance or for it processing through the grievance procedure. The matter of the exercise of seniority by Mr. Firth was first raised on June 9, 1972, and on June 16, the grievor protested his displacement. The Company replied thereto on July 11, 1972 and the effect of the reply was that the exercise of seniority by Mr. Firth, displacing the grievor was proper.

Article 9 called for the reference of a grievance not adjusted by direct representation, to the District Chairman for reference to the Superintendent. This stage seems not to have been followed, but no objection was raised on that ground. The next stage was reference by the General Chairman to the higher officers of the Company, and this stage was invoked by the General Chairman in a letter to the General Manager, dated August 23, 1972. In that letter the General Chairman, who had previously taken a different view of the matter, amended his position and asserted the claim of the grievor that the proper person to have been displaced was Mr. Savard. It was of course quite proper for the General Chairman to reconsider the matter, and there was nothing at all untoward in his advancing the grievor's claim. What is important for the determination to be made now is that the General Chairman's letter served to advance to the highest level the claim which originated with the grievance submitted by the grievor on June 16, 1972.

The General Manager replied to the General Chairman by letter dated August 30, 1972. The effect of the reply was that Mr. Firth's displacement of the grievor was proper. It was thereafter open to the Union to proceed to arbitration. As of the date of the General Manager's reply, there was no established time limit for referring the matter to arbitration, and the general rule would apply, namely, that such reference must be made within a reasonable time. On November 15, 1972, however, a new agreement became effective, which set out time limits for the several stages of the grievance procedure and for proceeding to arbitration.

The new agreement provided that, if a grievance was not settled at Step 3 (that is, between the General Chairman and the General Manager), it could be referred to arbitration by notification within twenty-eight calendar days following receipt of the decision in Step 3, or of the due date, if not received. Now the decision in what was the equivalent of Step 3 had been received on or shortly after August 30, 1972. The new agreement became effective on November 15, 1972, and it was agreed between the parties that for cases then in the grievance procedure, time limits would commence as of that date. Since the answer to the present grievance had been given at Step 3 by November 15, the Union then had twenty-eight days to refer the matter to arbitration.

It was not until January 5, 1973, that the Union suggested the matter be referred to arbitration. This was beyond the time limits by which the parties were then bound, and it would appear that, pursuant to the collective agreement and to the Memorandum establishing the Canadian Railway Office of Arbitration, I have no jurisdiction to entertain the matter.

The case is complicated by certain other steps taken by the grievor and by the Union. On November 9, 1972 the grievor wrote to the Chief Dispatcher asserting that he was not in fact displaced. Although this was suggested by the Union to be the filing of a grievance by the grievor, it is clear that it was simply an assertion by the grievor of the position which was fundamental to his grievance and which he had, himself, asserted throughout. The occurrence giving rise to the entire matter took place in June, 1972 and the grievance was initiated then. In any event the Company replied to the grievor on November 9, 1972, simply referring to his acknowledgment, dated June 13, 1972, that he had been displaced. The question of substance, of course would be whether the grievor was properly displaced. On November 22, the General Chairman wrote to the General Manager to say that he had been advised "that Mr. Firth did not displace the junior permanent Dispatcher", and to request corrective measures. This, however, while an assertion of the Union's position did not advance what was in fact the same matter beyond the stage it had reached in August. The General Manager replied, on December 9, 1972, to the effect that the grievor was the junior permanent dispatcher and that he was properly displaced.

On December 18, 1972 the General Chairman wrote again to the General Manager, putting forth the Union's position as to the meaning of the phrase "junior permanent Dispatcher", and indicating his understanding that the grievor was submitting a grievance. In fact, however, the grievor had submitted a grievance, and it had been dealt with. Even if the grievor's letter of November 9, 1972 be regarded as a grievance, it was, as indicated above, the very grievance that had already been dealt with. Further, it does not appear that the time limits set out in the new agreement were complied with, in any event.

For all of the foregoing reasons, it must be concluded that the matter has not been processed within the time limits which are binding upon the parties and upon me. The matter, therefore, is not within the jurisdiction of Canadian Railway Office of Arbitration, and the Company's preliminary objection is sustained.

(signed) J. F. W. WEATHERILL

ARBITRATOR