

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 429

Heard at Montreal, Tuesday, January 8th, 1974

Concerning

CANADIAN PACIFIC TRANSPORT LIMITED

and

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

DISPUTE:

Claim of the Brotherhood, Supervisor, W.G. Rattray, Regina, Saskatchewan, was returned to a position in the Collective Agreement by improperly being permitted to displace employee C. Pickford.

JOINT STATEMENT OF ISSUE:

W. G. Rattray, Supervisor at Regina, Saskatchewan was relieved of his Supervisor's position. He displaced schedule employee C. Pickford who in turn displaced schedule employee A.E. Bergquist.

Article 11.9 states:

11.9 Employees who accept official or excepted positions shall retain their seniority rights and continue to accumulate seniority in the group from which appointed.

Article 11.10 states:

11.10 Employees who accept positions not covered by another wage agreement shall retain their seniority rights and continue to accumulate seniority in the group from which transferred for a period not exceeding six months except as may otherwise be mutually agreed between the General Chairman and the appropriate officer of the Company.

Mr. Rattray was appointed to a supervisory position on October 17, 1960.

The Union contends that pursuant to Article 11.10, Mr. Rattray continued to accumulate seniority for a period of six months following his appointment to a supervisory position, i.e. he continued to accumulate seniority up to April 17, 1961, and that it was only this accumulated seniority which Mr. Rattray should have been permitted to exercise.

The Company contends that pursuant to Article 11.9, Mr. Rattray continued to accumulate seniority without limitation.

FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) L. M. PETERSON (SGD.) C. C. BAKER

GENERAL CHAIRMAN DIRECTOR, LABOUR RELATIONS AND PERSONNEL

There appeared on behalf of the Company.

C. C. Baker – Director, Labour Relations & Personnel, Vancouver

D. Cardi – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

L. M. Peterson – General Chairman; Toronto

G. Moore – Vice General Chairman, Toronto

AWARD OF THE ARBITRATOR

Article 11 of the collective agreement deals generally with the matter of seniority. Article 11.1 establishes certain Local, District and Regional seniority groups. By Article 11.2 there is to be a seniority list of all employees in each local seniority group showing the name and last date of entry into the service in a position covered by the collective agreement, of each employee. Article 11.3 deals with the maintenance of seniority lists and Article 11.4 appears to provide, in effect, for the "incontestability" (save by agreement between the parties) of seniority lists posted for ninety days.

The instant case involves seniority rights in the Regina locality of the Saskatchewan district of the prairie region. The seniority list for that local seniority group has shown, for some years it would seem, the name of W.G. Rattray as having a seniority date of August 21, 1941.

It would seem that Mr. Rattray entered the service in a position covered by the collective agreement on that date. According to the Joint Statement of Issue, Mr. Rattray was appointed to a supervisory position on October 17, 1970. From the material put forward at the hearing, however, it seems that in 1960 Mr. Rattray was awarded a foreman's position, a position coming within the bargaining unit. In June 1962, however, Mr. Rattray was appointed to what was clearly a supervisory position. He has now been removed from this position and has purported to exercise seniority rights within the bargaining unit, and this exercise has led to the displacement of persons said to be junior employees.

The matter of the seniority rights of members of the bargaining unit who leave the bargaining unit for other positions with the Company is expressly dealt with in Articles 11.9, 11.10 and 11.11 of the collective agreement. It is the Company's position that Article 11.9 governs the case, and Mr. Rattray was properly shown as having the seniority date of August 21, 1941 and was properly allowed to exercise his seniority on that basis. It is the Union's position that the matter is governed by Article 11.10, and that Mr. Rattray should have been shown as having accumulated seniority only until November 30, 1962, and permitted to exercise seniority only on that basis.

The collective agreement deals expressly with three sorts of cases in which employees accept positions with the Company outside the bargaining unit. It will be well to set out all three provisions here:

11.9 Employees who accept official or excepted positions shall retain their seniority rights and continue to accumulate seniority in the group from which appointed.

11.10 Employees who accept positions not covered by another wage agreement shall retain their seniority rights and continue to accumulate seniority in the group from which transferred for a period not exceeding six months except as may otherwise be mutually agreed between the General Chairman and the appropriate officer of the Company.

11.11 Employees who accept transfer to positions covered by another wage agreement shall lose their seniority rights; but this provision shall not apply if service is not required in the position vacated. When a full-time position becomes available in the seniority group from which an employee has transferred, failure to exercise seniority in that group will result in loss of seniority in that group.

These provisions were referred to in **CROA Case No. 347**, although the issue in that case was different. There, it was held that supervisors could not, on their own motion, exercise seniority rights within the bargaining unit, but that the rights which were retained could be exercised on their being returned to the unit. In **Case No. 347**, the employee concerned had been in an "official or excepted" position and it was held that he therefore retained his seniority rights and continued to accumulate seniority in the group from which he was appointed, as Article 11.9 provides. It was then said (although it was not necessary for the decision in that case), that Article 11.10 would appear to limit the general rights enjoyed pursuant to Article 11.

What was said at least to be clear was that in the event of a supervisor being returned to the bargaining unit, he would be entitled to exercise his accumulated seniority whatever that might be under Article 11.9 or 11.10.

A study of these provisions suggests, not that Article 11.10 qualifies Article 11.9, as was suggested in **Case No. 347**, but rather that each of the three articles deals with one of the three possibilities which may obtain on the transfer of an employee to a position outside the bargaining unit. This reading gives a logical and consistent interpretation to these sections of the agreement. Thus, an employee transferred to a position outside the bargaining unit may be transferred either to a management position outside of any bargaining unit, an "official or excepted position", and such cases are dealt with by Article 11.9. Or, he may be transferred to a position within some other (at least potential) bargaining unit, but one not covered by a collective agreement. In that case, which is of the sort dealt with by Article 11.10, the employee continues to accrue seniority in the group from which he was transferred, but does so only for a limited time. Third, an employee may be transferred to a position covered by another collective agreement and in that case – provided service is required of him in the new position – he loses his seniority rights Article 11.11.

The Union argues that the instant case is governed by Article 11.10. Now if the analysis I have suggested of these provisions is correct, it will be seen that the instant case is not of the sort to which Article 11.10 applies. That is, Mr. Rattray was not transferred to a position in any other

bargaining unit – although he was, it seems clear, transferred to a position not covered by a collective agreement. While the application of Article 11.10 may be thought to be doubtful, it is not doubtful that Article 11.9 applies. Mr. Rattray did indeed accept an "official or excepted" position. Therefore, he would be entitled to the benefit of Article 11.9 unless some other provision qualifies those benefits. While, as was suggested in **Case No. 347**, Article 11.10 might be read as setting out such a qualification, it is my view that a proper reading of the article does not support that interpretation. Article 11.10, it must be noted, is not restricted in its application to cases covered by Article 11.9. It is only when it is read in isolation that it can be thought to apply to a case like Mr. Rattray's. Read in the context of the whole article it is clear that it deals with one of the three possibilities inherent in these situations. Mr. Rattray's case does not fall within the scope of Article 11.10 thus understood.

Accordingly, it is my conclusion that the seniority list properly showed Mr. Rattray's seniority date as August 21, 1941. It may be noted finally that that date had been shown on the seniority list, apparently throughout the time Mr. Rattray occupied the official or excepted position, so that it may be that in any event that seniority date was no longer subject to protest. I decide this case, however, on the ground that the situation was governed by Article 11.9, and that Mr. Rattray, was being returned to the bargaining unit, was entitled to exercise his seniority on that basis.

For the foregoing reasons, the grievance is dismissed.

(signed) J. F. W. WEATHERILL

ARBITRATOR