

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 533

Heard at Montreal, Tuesday, January 13th, 1976

Concerning

CANADIAN PACIFIC TRANSPORT COMPANY LIMITED (CP TRANSPORT – WESTERN DIVISION)

and

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

EX PARTE

DISPUTE:

Employee W.G. Nicks was improperly denied a highway route at Red Deer, Alberta.

UNION'S SEPARATE STATEMENT OF ISSUE:

April 7th, 1975 A notice was served cancelling route 325, Red Deer – Rocky Mountain House, Tuesday and Thursday. May 7th, 1975 Bulletin No. 1, cancelled the highway position that contained routes 325, 328 – 329 and 353 – 354. May 7th, 1975 Bulletin No. 2. was posted covering highway routes 328 – 329, 351 – 352 and 353 – 354.

May 15th, 1975 Award bulletin No. 2-A, gave bulletin No. 2, to employees W.H. Wintermute and W.G. Nicks.

May 26th, 1975 Bulletin No. 3, cancelled award bulletin No. 2-A. May 26th, 1975 Bulletin No. 4, cancelled again position as outlined in bulletin No. 1. May 26th, 1975 Bulletin No. 5, was posted for position outlined in bulletin No. 2.

Bulletin No. 6, undated, and received by System Board, June 5th, 1975, informed concerned Officers an agreement had been negotiated by General Chairman, R. Welch, confirming employees W.H. Wintermute and G. L. Simpson as reassigned to positions outlined under bulletins Nos. 4 and 5.

System Board No. 517, contend the positions as shown in bulletins Nos. 2 and 5, should have been awarded, by seniority. Also that the Agreement as outlined in bulletin No. 6, was illegal.

The Company contend the bulletins as issued and the Agreement with General Chairman Welch must stand.

FOR THE EMPLOYEE:

(SGD.) L. M. PETERSON
GENERAL CHAIRMAN

There appeared on behalf of the Company:

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

And on behalf of the Brotherhood:

L. M. Peterson – General Chairman, Toronto

G. Moore – Vice General Chairman, Toronto

R. Welch – Senior General Chairman, Vancouver

AWARD OF THE ARBITRATOR

In this case, brought ex parte by the Union, the Company raises the preliminary objection that the matter is not arbitrable, in that the grievance was not brought within the time provided for by the collective agreement. Article 17-B-1 provides for the presentation of a grievance within 14 days of its cause. In this case the change affecting the grievor appears to have occurred on June 7, 1975. No claim appears to have been filed by the grievor until August 11, 1975, and there is nothing to suggest that the Company waived compliance with the requirements of the collective agreement. Since the grievance was, as is acknowledged, not brought within the proper time, and thus not processed in accordance with the collective agreement, I have, under the rules of the Canadian Railway Office of Arbitration, no jurisdiction to hear the matter.

It appears that the case touches on a more fundamental issue which has arisen involving the exercise of seniority rights as between two groups of employees, mileage-rated and terminal employees at Red Deer. The fact that there was, both before and after the grievance, a series of communications between the Company and the representatives of the two groups does not affect the status of the grievor's particular claim. The issues of substance in this case, most notably the propriety of an agreement between the Company and one of the groups of employees, apparently pursuant to Article VIII of the Job Security Agreement, remain open to be determined in a proper case, should one arise.

For the reasons given, however, the preliminary objection must be upheld here, and the grievance dismissed.

(Sgd.) J. F. W. WEATHERILL
ARBITRATOR