

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 634

Heard at Montreal, Wednesday, October 12, 1977

Concerning

CANADIAN PACIFIC LIMITED

and

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

DISPUTE:

Union claim that Mr. W. Kucheran, Yardmaster, should be removed from the "Clerks" seniority list.

JOINT STATEMENT OF ISSUE:

Mr. Kucheran, employed in a clerical position was appointed the position of Assistant Supervisor, C.S.C., a position on which seniority is protected under Article 21.8 of the Agreement. On November 18th, 1968, Mr. Kucheran was appointed C.S.C. Supervisor, a position on which seniority is protected under Article 21.8. On October 1, 1973, Mr. Kucheran reverted to the position of Yardmaster.

The Union contend that Mr. Kucheran forfeited seniority protection under Article 21.8 when he reverted to the position of Yardmaster.

The Company does not agree.

FOR THE EMPLOYEE:

(SGD.) R. WELCH
SYSTEM GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. D. BROMLEY
GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company:

P. E. Timpson – Assistant Supervisor, Labour Relations, Vancouver
D. Cardi – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

D. C. Duquette – General Chairman, Montreal

AWARD OF THE ARBITRATOR

Article 21.8 of the collective agreement provides as follows:

- 21.8** Employees promoted to official positions or to positions excepted or excluded from the terms of this agreement shall retain their rights and continue to accumulate seniority on the seniority list from which promoted. If an employee is released from such position he must revert to the seniority list and position from which promoted, unless such position has been abolished or is held by a senior employee. In such instance employee may exercise his seniority to displace a junior employee on that seniority list.

Employees holding excepted or official or excluded positions must exercise seniority as provided in the preceding paragraph and in accordance with Clause 25.2 before being eligible to apply for a schedule position under bulletin.

Reference may also be made to Article 21.11 which is as follows:

- 21.11** Seniority of employees promoted to position of Yardmaster, Assistant or Relieving Yardmaster shall be protected in the same manner as that of employees governed by Clause 21.8.

The Union's contention is that since Mr. Kucheran moved from one excepted position to another, he did not come within the scope of Article 21.8, which provides that "if an employee is released from such position", he is to revert to the position from which he was promoted, subject to the qualifications set out in that article. Generally speaking, this sort of provision serves to protect the seniority rights of members of the bargaining unit who are promoted outside the unit and may subsequently seek to return. In this case Mr. Kucheran was promoted first to Assistant Supervisor and then to C.S.C. Supervisor. When he was released from the latter job, he reverted to the position of Yardmaster. As a Yardmaster he would, by virtue of Article 21.11, be entitled to protection of seniority.

In my view, when Article 21.8 refers to release from "such position" it refers to release from the class of official, excepted or excluded provisions to which Article 21.8 applies. It does not imply the loss of seniority protection if an employee is moved to another position within that class, nor does it require the conclusion that if there is a release from such second position, there must thereupon be a return to the original bargaining unit position. Even if such a narrow reading of the collective agreement were to be adopted, it would be a meaningless exercise, at least in the circumstances of this case, since it would be open to the Company, having displaced, perhaps another employee in order to satisfy the grievor's rights in the bargaining unit, thereupon to promote Mr. Kucheran to the position of Yardmaster.

In any event, then, it is my conclusion that the collective agreement does not require the removal of Mr. Kucheran's name from the seniority list in question. Accordingly, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR