

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 636

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**

EX PARTE

DISPUTE:

The Company's failure to concur with the Brotherhood's requirements for seniority protection of Mr. T.K. Sinclair.

COMPANY'S STATEMENT OF ISSUE:

In September 1976, Train Dispatcher T.K. Sinclair was appointed to an official position within the Company, and he submitted a request jointly to the Company and the Brotherhood for protection of seniority under Article 5.14 of the collective agreement. The Brotherhood submitted their Form 11 to the Company as a vehicle for the arrangements referred to in Article 5.14, which the Company refused to sign.

The Company contends that while it recognizes its duty to make arrangements with the Brotherhood to protect the seniority of Mr. Sinclair, the collective agreement does not require the Company to sign the particular Form submitted by the Brotherhood.

FOR THE COMPANY:

(SGD.) R. J. SHEPP

GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company:

J. A. McGuire	– Manager, Labour Relations, Montreal
J. A. Sampson	– Supervisor Labour Relations, Winnipeg
M. Yorston	– Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

D. C. Duquette	– General Chairman, Montreal
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AWARD OF THE ARBITRATOR

Article 5.14 of the collective agreement requires the parties, or more particularly the Local Chairman and the Superintendent, to make “arrangements” for the protection of the seniority of persons appointed to positions outside the bargaining unit. It is important to consider the article in the context of the provisions relating to seniority lists and seniority protection to which it is related. The following articles are material (the numbering of these articles has been altered – the numbers here used are those to which the parties referred):

- 5.12** Except in cases of death, dismissal, resignation or unavailability for duty when required after proper notice, no Telegrapher’s name will be deleted from the seniority list on any seniority district unless by mutual agreement between the Company’s officers and the representatives of the employees.
- 5.13** When a Telegrapher is offered a position in another department by the Company it is not obligatory upon him to accept but if he does he forfeits seniority rights unless an understanding to the contrary is reached between himself and his Superintendent and confirmed through the Local Chairman.
- 01** Positions of Agent that are excepted from the terms of this Agreement shall be considered as governed by Article 5.13.
- 5.15** Upon request of the employee, arrangements shall be made between the Local Chairman and the Superintendent for such employee promoted to an official position to retain and continue to accumulate seniority rights.

In the instant case Mr. Sinclair made a request for seniority protection as contemplated by article 5.15, above. It then became the duty of the Local Chairman and the Superintendent to make “arrangements” for Mr. Sinclair “to retain and continue to accumulate seniority rights”. In an attempt to meet this obligation the Brotherhood prepared and sent to the Company a document known as “Form 11”, being a “Protection of Seniority Certificate”. This document, which was signed by a Local Chairman and provided space for signature by a Superintendent, would have guaranteed protection of Mr. Sinclair’s seniority date or dates, and would have been valid “provided that the aforementioned employee remains in good standing at all times” with the Brotherhood. The Company, while recognizing its obligation to make “arrangements” pursuant to article 5.15, has refused to sign this form.

The “Form 11” submitted by the Brotherhood appears to be substantially the same form which has been used in most but not all cases of seniority protection over many years. As was noted in **Case No. 405**, such a certificate would represent the sort of “understanding” referred to in article 5.13. The collective agreement does not, however, require an “understanding” in any particular form or embodying any particular terms. It is, I think, significant that it contemplates arrangements being made at a local level. The collective agreement does not, of itself, provide for the retention or accumulation of seniority rights except to the extent that the parties shall, at the local level, provide some form of protection. Unless such understanding is reached (between the employee and the superintendent, concurred in by the Local Chairman), then the employee forfeits his seniority rights, pursuant to article 5.13.

It is clear from the foregoing that while the collective agreement does not expressly contemplate any particular form of agreement, it does require that there be such an agreement where the employee requests it, although it does not appear to provide any way out of the impasse which arises when the parties do not agree as to the “arrangements” to be made. While the Company has, in the past, been content to sign a “Form 11” as the “arrangement” for seniority protection, it has refused to do so in the case of Mr. Sinclair (which appears to be one among a number of related cases).

This grievance is brought by the Brotherhood (although submitted to arbitration by the Company) and involves the claim that the Company is bound to sign the Form 11 which has been put forth by the Brotherhood. The Company’s refusal appears to be a result of certain changes in the Brotherhood’s dues structure which may have changed the practical effect of the requirement that the holder of a seniority protection certificate in Form 11 remain “in good standing” with the Brotherhood. The effect of such changes in cases of persons for whom such a certificate has been issued in the past is not in issue in this case. What is in issue here is whether or not the Company is required to sign a certificate in Form 11 whenever it is proffered by the Brotherhood in respect of an employee referred to in article 5.15, or, more particularly, whether the Company is required to sign such form in Mr. Sinclair’s case.

As has been noted, there is no such obligation directly expressed in the collective agreement. As to the Brotherhood's view that Form 11 has become, through usage, the established arrangement contemplated for seniority protection, it must be said that the form itself does not constitute an "arrangement". Rather, the form has in most cases been used to give effect to the arrangement. The distinction is not as trivial as it might at first appear to be: the collective agreement contemplates in article 5.13 that there may be an "understanding" between the employee and his superintendent, and that this understanding be confirmed by the Local Chairman. Article 5.15 provides that "arrangements" be made between the Superintendent and the Local Chairman. What is conspicuously absent from the collective agreement is that seniority protection be accorded in some standard way, as for example in accordance with Form 11. If it were a requirement that the Company sign Form 11 in all cases, these provisions would be in contradiction thereof.

On the narrow question whether or not the Company is obliged to sign Form 11 with respect to Mr. Sinclair, then, the answer must be that the collective agreement does not impose such a requirement. This does not relieve the parties of their obligations under the collective agreement, nor does it indicate any way out of the impasse which may have been reached in Mr. Sinclair's case. The answer to the particular grievance before me, however, is that the Company is not obliged to sign Form 11.

(signed) J. F. W. WEATHERILL
ARBITRATOR