

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1001

Heard at Montreal, Tuesday, November 9th, 1982

Concerning

CANADIAN PACIFIC LIMITED

and

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

DISPUTE:

Union claim that employee D. Stoner, Relieving Yardmaster, should be removed from the BRAC-CPR Vancouver A-1 seniority list.

JOINT STATEMENT OF ISSUE:

On June 12th, 1981, Mr. Stoner, employed in a clerical position in the Vancouver Customer Service Centre, was promoted to the position of Relieving Yardmaster, Coquitlam. Yardmaster is a position governed by the terms and conditions of another Collective Agreement, however, when so promoted seniority as a clerk is protected under Article 21, Clauses 21.8 and 21.11 of the BRAC Agreement.

In December 1981, Mr. Stoner requested a 3 month leave of absence from his Relieving Yardmaster position in order to attend school on a full time basis, starting January 11th, 1982.

On April 8th, 1982, Mr. Stoner's leave of absence was extended to April 23rd.

The Union contends that in these circumstances, the BRAC General Chairman should have been notified and his approval obtained for this leave of absence in order that Mr. Stoner retain seniority protection.

The Company does not agree.

FOR THE BROTHERHOOD:

(SGD.) R. WELCH
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) L. A. HILL
GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

L. J. Masur – Supervisor, Labour Relations, Vancouver
D. Cardi – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

P. L. Rouillard – Vice General Chairman, Vancouver
Pierre Vermette – Vice General Chairman, System Board #14, Montreal

AWARD OF THE ARBITRATOR

Mr. Stoner, being promoted to a Yardmaster's position, became subject to the terms of the Collective Agreement between the Company and the United Transportation Union covering the Yardmasters' bargaining unit. He was properly granted a leave of absence pursuant to that agreement, and no doubt the brief extension of the leave was proper too.

Mr. Stoner retained – and continued to accumulate – seniority the BRAC bargaining unit by virtue of Article 21.8 and 21.11 of the Collective Agreement. Those Articles are 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.

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.

These Articles do not deal expressly with the matter of leave of absence. As noted, Mr. Stoner was granted leave of absence under another Collective Agreement. Under the BRAC Collective Agreement, leave of absence is governed by Article 26.2, which is as follows:

26.2 When the requirements of the service permit, employees, on request, will be granted leave of absence for periods of up to three months with privilege of renewal. Leave of absence of more than three months shall be subject to the approval of the General Chairman, except in cases of leave being granted for medical reasons in which cases the General Chairman will be informed but his approval not required.

It is the Union's contention that Mr. Stoner ought to have obtained the approval of the General Chairman (this was not a leave for medical reasons), for the extension of his leave of absence beyond three months. In my view, this contention is correct.

While Mr. Stoner did not require any agreement from the General Chairman simply to authorize his absence from work, he did require such authorization in order to protect the accrual of his seniority in the BRAC bargaining unit. The effect of Articles 21.8 and 21.11 is to protect an employee's seniority in this bargaining unit, not to increase the seniority rights, relative to others, of employees transferred out of it. The approval of the General Chairman permits the Union, as bargaining agent for all employees in the unit, to exercise an appropriate control over the continued accumulation of seniority by employees not actually at work. Not to require such approval in the case of an employee retaining seniority but no longer at work in the bargaining unit is to grant such employee greater seniority rights than those enjoyed by active members of the bargaining unit. That is not within the contemplation of any of the provisions of the Collective Agreement.

Quite independently then of any requirements of the Yardmaster's Collective Agreement with respect to leave of absence, it was incumbent on Mr. Stoner to have the approval of the General Chairman in order to continue to accumulate seniority in the BRAC unit, when his leave of absence exceeded three months. That approval was not sought, and it is my conclusion that the material provisions of the Collective Agreement were not met.

It does not follow that Mr. Stoner's seniority should be lost on account of this failure. Termination of seniority rights, acquired by length of service, is a serious matter and apart from any express provisions in the Collective Agreement (there are none governing this case) should only occur where such a result is a necessary implication of the terms of the agreement. In the instant case, Mr. Stoner's leave of absence exceeded that which he could have taken without the General Chairman's approval by some two weeks. In my view, his seniority under the BRAC agreement should not be considered as having accrued during that period, and his seniority date should be adjusted

accordingly. With the exception of that period, there cannot be said to have been any effect on the relative rights of the grievor and the bargaining unit employees.

For all of the foregoing reasons, the grievance is allowed to this extent: it is declared that, for the continued accrual of Mr. Stoner's seniority in the BRAC bargaining unit, the approval of the General Chairman was necessary. In the circumstances of this particular case, however, the result is declared to be a two-week adjustment in Mr. Stoner's seniority in that group.

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