

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1034

Heard at Montreal, Tuesday, February 8th, 1983

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

The displacement of Mr. J. E. Woods by Mr. E. C. Ariss on March 10, 1982, as the Operator of a Group I machine (Tie Handling Crane).

JOINT STATEMENT OF ISSUE:

In compiling the 1982 Machine Operators seniority list for 1982 on the Prairie Region, District One, J. E. Woods was assigned seniority number 89 and E. C. Ariss number 62 for Group I machines which includes the Tie Handling Crane.

The Union contends: **1.)** that prior to the 1982 seniority list, J. E. Woods was senior to E. C. Ariss for the Tie Handling Crane. **2.)** that J. E. Woods could not lose seniority as contemplated in section 3.11 in that he had complied with Section 3.3 to 3.9 of the Machine Operators memorandum. **3.)** that J. E. Woods be restored with his seniority date of December 23, 1971, for the Tie Handling Crane and be paid for any loss of wages or extra expenses incurred account being displaced by E. C. Ariss, junior in seniority.

The Company denies the Union's contentions.

FOR THE BROTHERHOOD:

(SGD.) H. J. THIESSEN
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. J. SHEPP
GENERAL MANAGER, OPERATION AND MAINTENANCE.

There appeared on behalf of the Company:

R. D. Falzerano – Assistant Supervisor, Labour Relations, Winnipeg
R. E. Petley – Assistant Regional Engineer, Winnipeg
R. A. Colquhoun – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen – System Federation General Chairman, Ottawa
L. DiMassimo – Federation General Chairman, Secretary-Treasurer, Montreal
G. Valence – General Chairman, Sherbrooke
F. L. Stoppler – Vice-President, Ottawa

AWARD OF THE ARBITRATOR

In 1981, the grievor was shown, with respect to a number of machines, as having greater seniority on those machines than Mr. Ariss. The machines in question were Group 2 machines, and they included the tie handling crane. As a result of the application of a Memorandum of Agreement of April 28, 1978, the tie handling crane was upgraded and included with the Group 1 machines. Mr. Ariss had seniority as a Group 1 machine operator.

Employees are classified, under the Memorandum of Agreement, not by machines, but by groups. By Article 2.2 of the Agreement, seniority within a classification relates to date of appointment in such classification. The grievor did not become a Group 1 machine operator until the tie handling machine was agreed to come within Group 1. He retained a higher seniority ranking than Mr. Ariss on the remaining Group 2 machines (it would seem), but he had a lower seniority ranking than Mr. Ariss on Group 1 machines (now including the tie handling machine), because Mr. Ariss already had seniority as a Group 1 machine operator. The agreement did not provide for "homestead rights" which might have protected the grievor's seniority on the tie handling machine, notwithstanding its inclusion in a higher Group.

Under the Memorandum of Agreement, seniority is exercised by group and not by machine. When given seniority in a higher group, the grievor was properly assigned the date of appointment to that group, and he did not bring to it the machine seniority he had previously held. While he retained his Group 2 seniority, he did not achieve a Group 1 seniority better than that of his appointment to that group. Accordingly, his position with respect to the tie handling crane – as with respect to any other Group 1 machine – was lower than that of Mr. Ariss, and he was properly subject to displacement.

Accordingly, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR