

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1069

Heard at Montreal, Wednesday, April 13th, 1983

Concerning

**VIA RAIL CANADA INC.**

and

**CANADIAN BROTHERHOOD OF RAILWAY,  
TRANSPORT AND GENERAL WORKERS**

### **DISPUTE:**

Interpretation of articles 13.3 (b) – 13.4 of collective agreement 1 for the purpose of establishing seniority for spare and relief work.

### **JOINT STATEMENT OF ISSUE:**

Mr. G. A. Baker was hired at Saint John, New Brunswick on June 22, 1980 to protect spare and relief work offering as Ticket Agent and Baggage Attendant at that terminal.

The grievor requested to transfer his seniority to Moncton, New Brunswick to also protect spare and relief work at that terminal.

The Corporation ruled the grievor could not make that election, since he never held a regular assigned position at either Saint John or Moncton.

The Brotherhood contends the grievor is governed by the provisions of article 4, and as such, was entitled to work at Moncton.

**FOR THE BROTHERHOOD:**

**(SGD.) TOM MCGRATH**  
NATIONAL VICE-PRESIDENT

**FOR THE CORPORATION:**

**(SGD.) C. O. WHITE**  
FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

A. Leger – Labour Relations Officer, Montreal  
D. J. Matthews – Regional Manager, Human Resources, Moncton  
C. O. White – Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

W. Vance – Regional Vice-President, Moncton  
Tom McGrath – National Vice-President, Ottawa

## AWARD OF THE ARBITRATOR

The grievance as originally filed alleged a violation of articles 13.3 (b) and 13.4 of the collective agreement. Articles 13.3 and 13.4 are as follows:

13.3 An employee whose position is abolished or who is displaced from his permanent position may:

- (a) displace a junior employee in his own seniority group on a temporary or permanent position, for whose position he is qualified, or
- (b) after exhausting his seniority rights at his home station or terminal, he may elect to protect spare and relief work in his own seniority group at his present and relief work in any seniority group at any one point shall not exceed one such employee for every five positions established in that seniority group at that point.

Such an employee shall forfeit his seniority, if he does not notify the officer in charge and the Local Chairman in writing of his choice within ten calendar days from the date of displacement or abolition of his position.

An employee who does not elect (b) above and has exhausted his seniority rights under his own job security eligibility territory, will have his name placed on his regional laid-off list.

13.4 An employee, who has signified his intention to displace a junior employee, shall forfeit his seniority and his name shall be removed from the seniority list if he fails or refuses to commence work on the regularly assigned position he has chosen within 20 calendar days of making his choice, or within five calendar days of exercising his seniority to a temporary assignment. An employee completing or being displaced from a temporary position may displace a junior employee on another temporary or permanent position for whose position he is qualified.

Article 13 deals with "Staff Reduction, Displacement and Recall to Service". The grievor, from the start of his employment, covered spare and relief work at Saint John. It may be noted that by article 13.3 (b), the number of employees protecting spare and relief work in any seniority group at any one point is limited.

While the material before me does not suggest that the grievor was affected by the operation of the clause just referred to, and while his position was not abolished (since he did not have one), nor was he displaced, the grievor nevertheless relocated from one point to another, and seeks entitlement to work, in order of regional seniority, at that other point.

It is clear that articles 13.3 and 13.4 do not apply in the grievor's case. It is to be noted, however, that he now asserts a claim greater than one which could be asserted by an employee whose position has been abolished or who is displaced; that is, he seeks to protect spare and relief work at a station or terminal from which he had not previously been laid off or displaced.

However, this may be, the case has been advanced to Arbitration as one coming within article 4 of the collective agreement. Article 4 is a lengthy article, dealing with hours of work. The section relied on by the Union is article 4.13, which is as follows:

4.13 Where work is required by the Corporation to be performed on a day which is not part of any assignment, it may be performed by an available extra or unassigned employee who would otherwise not have 40 hours of work that week.

That article does not provide for "extra or unassigned employees" any right to prevail over those entitled to protect spare and relief work. Neither does it provide, for any employee, any particular right to exercise seniority. The grievor, having moved away from a point (Saint John), at which he protected spare and relief work, now seeks to do the same, on the basis of his regional seniority, at the point to which he moved (Moncton). Article 4 does not deal with such a situation, and cannot properly be read as having the surprising effect of conferring on spare and relief employees greater rights of seniority than those expressly conferred, elsewhere in the agreement and in the appropriate clause, on employees whose positions are abolished or who are displaced. The grievor's name may have appeared on the regional seniority list, but his exercise of seniority must be in accordance with the collective agreement, and I was not referred to any provisions of the agreement which would allow what this grievance claims.

For the foregoing reasons, the grievance is dismissed.

**(signed) J. F. W. WEATHERILL**  
ARBITRATOR