

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1137

Heard at Montreal, Thursday, September 29, 1983

Concerning

ONTARIO NORTHLAND RAILWAY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The exercise of seniority by M. A. Milligan to displace R. McConnell.

JOINT STATEMENT OF ISSUE:

On March 21, 1983, Mr. R. McConnell was displaced under article 4.7(d) (ii) of the collective agreement by Mr. M. A. Milligan who was returning to a scheduled position from excepted employment. The Brotherhood claimed that Mr. Milligan returned at his own request and therefore he was only entitled to utilize the procedures contained in article 4.7(d) (i). The company maintained that Mr. Milligan was released at other than his own request and that article 4.7(d) (ii) governed.

FOR THE BROTHERHOOD:

(SGD.) T. N. STOL
REPRESENTATIVE

FOR THE COMPANY:

(SGD.) P. A. DYMENT
GENERAL MANAGER

There appeared on behalf of the Company:

A. Rotondo – Manager Labour Relations, North Bay

And on behalf of the Brotherhood:

T. N. Stol – Representative, Don Mills

AWARD OF THE ARBITRATOR

On January 3, 1983, Mr. M. A. Milligan gave written notice that he intended to displace Mr. R. McConnell, Motorman at Kirkland Lake pursuant to his rights under article 4.7(d)(ii) of the collective agreement.

On November 5, 1982, the Company abolished Mr. Milligan's management position of Operations Supervisor (an excepted position) at Kirkland Lake. Mr. Milligan's job thereby became redundant. The Company offered Mr. Milligan the management position of "Commissary Supervisor" at North Bay on a "trial basis". Mr. Milligan left that position after a period of ten days. He then returned to Kirkland Lake and elected to exercise his displacement rights under article 4.7 (d)(ii) bumping Mr. McConnell from his regular position.

The issue in this case is whether Mr. Milligan was released from his excepted position at his own request. Or, if he was released "at other than his own request", he was entitled to exercise the bumping privileges provided under article 4.7 (d)(ii). If he was released at his own request then article 4.7(d)(i) provides that he is precluded from exercising bumping privileges. The relevant provisions of the collective agreement read as follows:

4.7 (d) (i) If he is released at his own request, he will be required to render thirty (30) days cumulative service as a spare employee before he is eligible to exercise full seniority rights in bidding on vacancies or newly created positions. Under no circumstances will such employee be allowed to displace any regularly assigned employee until he has been assigned by bulletin to a position other than a temporary position in his own group; or

(ii) If released at other than his own request he may exercise his seniority rights to any position in his seniority group which he is qualified to fill. He must make his choice of position in writing within ten (10) calendar days from the date released from excepted employment.

There is no question that had Mr. Milligan elected "to bump" the grievor immediately upon the abolition of his position as Operations Supervisor on November 5, 1982, there would be no issue as to his entitlement under article 4.7(d)(ii). Mr. Milligan, however, elected to accept a second management position at North Bay, on a trial basis, for an indefinite period. After two weeks for reasons, that, in my view, are irrelevant to the disposition of this case, he voluntarily decided on December 2, 1982, to quit the excepted position at North Bay.

I am satisfied that at that time Mr. Milligan left the position of "Commissary Supervisor" at his own request. He thereby became foreclosed from reviving the rights he was initially entitled to exercise upon the abolition of his excepted position as Operation Supervisor.

It seems to me that an employee, whatever his position in the bargaining unit, cannot sit on his rights indefinitely. In accepting an offer to occupy another "excepted position", albeit on a trial basis, Mr. Milligan waived his rights under article 4.7(d)(ii). When he voluntarily left the second excepted position he did so "on his own request", and thereby was precluded under article 4.7(d)(i) from displacing Mr. McConnell.

For all the foregoing reasons Mr. McConnell's grievance succeeds and he is entitled to reinstatement to his regular position and the relief requested in his grievance. I shall remain seized in the event of difficulty in the implementation of his award.

(signed) DAVID H. KATES
ARBITRATOR