

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1170

Heard at Montreal, Tuesday, January 10, 1984

Concerning

VIA RAIL CANADA INC.

and

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

DISPUTE:

Employee exercising seniority on return from excepted employment.

JOINT STATEMENT OF ISSUE:

Mr. J. Hallonquist held a position at Winnipeg covered by agreement no. 1 when he was promoted to an excepted position on May 9, 1979.

In October 1981, Mr. Hallonquist, still in a management position, was granted an educational leave of absence.

Due to a reduction in work, Mr. Hallonquist was released from excepted employment and on April 18, 1983 exercised his seniority and returned to the unionized ranks, as provided by article 11.9, displacing the grievor, Mr. D. Ryhorchuk.

The Brotherhood contended that Mr. Hallonquist was governed by article 17.6 and could not exercise his seniority until the agreed upon educational leave expired. For this reason, the Brotherhood requested that affected employees be returned to their respective positions and compensated accordingly if loss of earnings resulted.

The Corporation rejected the Brotherhood's request through all steps of the grievance procedure.

FOR THE BROTHERHOOD:

FOR THE CORPORATION:

(SGD.) TOM MCGRATH
NATIONAL VICE-PRESIDENT

(SGD.) A. GAGNÉ
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

A. Leger – Manager, Labour Relations, Montreal
C. O. White – Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

Wm H. Matthew – Regional Vice-President, Winnipeg

AWARD OF THE ARBITRATOR

The issue in this case pertains to the bumping privileges of an "excepted employee" who is on educational leave at the time he exercises his rights under article 11.9 of the collective agreement and is returned to the bargaining unit. Or, more succinctly, can that employee displace an incumbent member of the bargaining unit where a regular employee, in the same circumstances, having regard to article 17.6 and the letter of understanding with respect thereto, would be precluded from doing so. Article 17.6 reads as follows:

17.6 Leave of absence for educational purposes may be granted to employees in accordance with the Corporation's regulations. The Regional Vice-President of the Brotherhood will be informed when such leaves are granted. Such employees who return to the service between school terms, or prior to terminating the educational course for which leave of absence has been granted, will not be permitted to exercise their seniority.

In this case Mr. J. Hallonquist, an excepted employee, was advised in April 1983 of his release from his excepted position. He exercised his privileges under article 11.9 to return to the bargaining unit and sought to bump Mr. Ryhorchuk, a scheduled employee. At all material times Mr. Hallonquist was a student on educational leave from the employ of the Company. In September, 1983 he intended to return to school to complete his course work.

The Employer has taken the position that Mr. Hallonquist could bump Mr. Ryhorchuk during the summer period when he was off school. Because Mr. Hallonquist was granted educational leave pursuant to the privileges extended managerial employees he was not caught by article 17.6 of the collective agreement and the parties' letter of understanding. Mr. Hallonquist would only be affected by article 17.6 when he elected to apply to the Company in September, 1983 for educational leave as a scheduled employee and was granted such leave. The procedure contemplated by article 17.6, to the extent it required notification by the Employer to the Trade Union of the granting of such leave, was operative only upon the granting of the request made by Mr. Hallonquist for such leave as a member of the bargaining unit.

I find no merit in the Company's position. The objective of article 17.6 of the collective agreement is designed to protect scheduled employees from the very threat to their job security as has been described herein. When Mr. Hallonquist exercised his privileges under article 11.9 he did so as an excepted employee whose status was that of an employee on educational leave. He retained that status when he decided to return to the bargaining unit. Upon returning to the bargaining unit he assumed both the privileges and the obligations of a scheduled employee on educational leave under the collective agreement. Nothing prevented Mr. Hallonquist from exercising his privileges under article 11.9 to return to the bargaining unit. His ability "to bump", however, an incumbent scheduled employee would be deferred, as all regularly scheduled employees on educational leave, until that leave was spent.

The purpose of the procedural niceties of article 17.6 of the collective agreement in requiring the Company to inform the Trade Union of its intention to grant (and in this case to continue) Mr. Hallonquist's educational leave is to enable it to protect the rights of employees, like Mr. Ryhorchuk, from being undermined. It would be unwarranted to allow that procedural requirement to prevent that specific objective from being met because the Company has decided to delay Mr. Hallonquist's continued leave of absence until he was required to return to school.

For the foregoing reasons, the grievance succeeds and Mr. Ryhorchuk is to be compensated for any loss of monies arising out of the Employer's decision.

(signed) DAVID H. KATES
ARBITRATOR