

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1174

Heard at Montreal, Tuesday, January 10, 1984

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. R. P. Bilous, painter with the B&B gang located at Weston had been performing the B&B gang time-keeping and ordering supplies. In a letter dated August 11, 1982, he was notified that his position was abolished effective August 17, 1982. On August 13, 1982, a B&B clerk position was advertised to employees in the BRAC bargaining unit, and subsequently awarded to an employee represented by BRAC

JOINT STATEMENT OF ISSUE:

The Union contends that: **(1.)** Mr. R. P. Bilous was improperly laid off and replaced by an employee from another Union Organization. **(2.)** The work of timekeeping, within the B&B Department, properly belongs to B&B and within the scope of Wage Agreement No. 41. **(3.)** R. P. Bilous be paid for all lost wages from August 17, 1982, onward. **(4.)** Such positions be bulletined as required by Section 14.1, Wage Agreement No. 41.

The Company denies the Union's contention and denies payment.

FOR THE BROTHERHOOD: FOR THE COMPANY:

(SGD.) H. J. THIESSEN (SGD.) R. Bryant

System Federation General Chairman for: Chief Mechanical Officer

There appeared on behalf of the Company:

A. de Montigny – Supervisor Personnel & Labour Relations, Mechanical Department, Montreal

D. J. David – Labour Relations Officer, Montreal

J. P. Lotecki – Personnel Development Officer, Winnipeg

R. A. Colquhoun – Labour Relations Officer, Montreal

D. Wattling – Manager Work Equipment, Vancouver

And on behalf of the Brotherhood:

H. J. Thiessen – System Federation General Chairman, Ottawa

R. Gaudreau – Vice-President, Ottawa

G. Valence – General Chairman, Sherbrooke

E. J. Smith – General Chairman, London

L. DiMassimo – Federation General Chairman, Montreal

AWARD OF THE ARBITRATOR

On August 11, 1982 the grievor Mr. R. P. Bilous was advised that his position as Painter at the Weston Shops in Winnipeg, Manitoba was to be abolished effective August 17, 1982. At the hearing the Company's brief corrected the error made by the grievor's supervisor. The grievor was displaced from his position as a painter by the exercise of the bumping privileges of a more senior colleague, Mr. F. Smith.

The practice at the Weston Shops was for a tradesman in the bargaining unit to perform several clerical duties inclusive of timekeeping functions. These clerical duties were performed by Mr. Bilous while he occupied the Painter's position. Upon his displacement to a Bridgeman's position the company decided to make certain changes with respect to the performance of the clerical duties at the Weston Shops. These changes may very well have been motivated by Mr. Smith's inability to perform the clerical duties formerly discharged by Mr. Bilous.

The company created a new clerical position that encompassed the duties performed by a tradesman at Weston Shops and the augmented typing and clerical duties itemized in the Company's brief. The company then bulletined the newly created position for bidding by members of the BRAC bargaining unit. The position eventually was awarded to a BRAC employee. The grievor has grieved the employer's actions and claims that he ought to have been entitled to bid for and be awarded the position. In essence, it is alleged that the company has deprived him of the position he occupied while he was classified as a Painter.

The company's position is both sound and unassailable. The position that was created pertained to the performance of essentially clerical duties inclusive of the timekeeping and other duties normally performed by Mr. Bilous and accordingly was a position that belonged to the BRAC bargaining unit. There being no position in the grievor's bargaining unit that was appropriate to the job description comprising the new clerical position the company properly offered it for bid to the members of the BRAC bargaining unit.

Moreover, because there was no provision contained in the collective agreement that expressly prevented the company from making the impugned change, there existed no basis for challenging the procedures that were adopted by the company. I quite agree with the principle recited by the company in its assertion that, in the absence or a provision restricting such action in the collective agreement, an employee does not have a proprietary interest in his job.

For all the foregoing reasons, the grievance is denied.

(signed) DAVID H. KATES

ARBITRATOR