

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1884

Heard at Montreal, Wednesday, 15 February 1989

Concerning

CANADIAN PACIFIC LIMITED

And

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

The seniority of A. J. Dyck and G. Inglis under the terms of Article 21 of the Collective Agreement.

JOINT STATEMENT OF ISSUE:

Both A. J. Dyck and G. Inglis were promoted prior to July 1, 1985, to positions of Yardmasters with their seniority protected under Article 21.10.

On June 27, 1986, Mr. Dyck and on October 27, 1986, Mr. Inglis were promoted to the positions of Yard Supervisors, positions not covered by another collective agreement and non-scheduled in nature.

The Union contends that when Messrs. Dyck and Inglis were promoted to the Yard Supervisor's position, the protection of Article 21.10 was lost and Article 21.8.2 applies, thus freezing their seniority after one year.

The Company contends that Article 21.8.1 applies and that Messrs. Dyck and Inglis maintain their seniority rights.

FOR THE UNION:

(SGD) D. DEVEAU
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD) J. M. WHITE
GENERAL MANAGER, OPERATION & MAINTENANCE, HHS

There appeared on behalf of the Company:

L. J. Guenther – Assistant Supervisor Labour Relations Vancouver
D. A. Lypka – Labour Relations Officer, Vancouver
P. E. Timpson – Labour Relations Officer, Montreal

And on behalf of the Union:

D. Deveau – General Chairman, Calgary
J. Robertson – Vice-General Chairman, Nelson

AWARD OF THE ARBITRATOR

The position advanced by the Union would purport to remove from Yard Supervisors Dyck and Inglis specific protections which they enjoyed in respect of their present and future seniority at the time they were promoted out of the bargaining unit. **The preponderant view in Canadian arbitral jurisprudence is that the preservation and accumulation of seniority is one of the most important individual rights vested in an employee, and the terms of a collective agreement should not be interpreted in such a way as to truncate the rights of an individual in that regard save by clear and unambiguous language.** It should not lightly be presumed that the parties would have intended for a person to leave the bargaining unit on the understanding that his or her seniority rights would be protected, only to have them limited or removed by a subsequent agreement. (*See Brown and Beatty, Canadian Labour Arbitration, 2nd edition (Aurora 1984) at pp 266-68.*)

In the instant case the Arbitrator is satisfied that the terms of Article 21.8.1 apply to Yard Supervisors Dyck and Inglis, as contended by the Company. For these reasons the grievance must be dismissed.

February 17, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR