

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1913

Heard at Montreal, Thursday 13, April 1989

Concerning

### ONTARIO NORTHLAND RAILWAY

And

### BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

#### **DISPUTE:**

Claim for wages on behalf of B&B Carpenter, Mr. J. Hamilton, while assigned temporarily to work away from his permanent headquarters location.

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

A Temporary Carpenter's position existed at Kirkland Lake Motor Car Shop as a result of Mr. P. Woodyatt, vice, being promoted to a temporary Foreman's position.

The Company assigned Mr. J. Hamilton to the temporary Carpenter's position.

The contention of the Brotherhood is that Mr. Hamilton is entitled to all expenses incurred as a result of being appointed to the temporary Carpenter's position in accordance with Section 21.8 of Agreement 7.1, and all other applicable rules.

The Company disagrees with the Union's contention.

#### **FOR THE BROTHERHOOD:**

**(SGD) G. SCHNEIDER**  
SYSTEM FEDERATION GENERAL CHAIRMAN

#### **FOR THE COMPANY:**

**(SGD) P. A. DYMENT**  
GENERAL MANAGER

There appeared on behalf of the Company:

M. Restoule – Labour Relations Officer, North Bay  
G. Payne – Chief Engineer, North Bay

And on behalf of the Brotherhood:

R. Liberty – Secretary/Treasurer and General Chairman, Winnipeg

## **AWARD OF THE ARBITRATOR**

The position asserted by the Company is that because Mr. Hamilton agreed to fill the temporary vacancy at Kirkland Lake he cannot claim expenses incurred as a result of his physical displacement. The claim is filed under Article 21.8 which provides as follows:

21.8 Employees taken off their assigned territory or regular boarding outfits, to work temporarily on snow or tie trains, or other work, shall be compensated for boarding and lodging expenses they necessarily incur. This shall also apply under similar conditions to pump repairers when taken away from their headquarters and to pumpmen when away from their regularly assigned territory.

The Brotherhood concedes that when an employee exercises seniority by bidding on a bulletined position or displacing a junior employee to another location the employee is not entitled to the payment of expenses. I am satisfied that in the instant case it cannot be said that the grievor exercised seniority. That, however, in my view is not dispositive of the merits of the grievance. Having regard to the admitted treatment of employees exercising seniority to obtain work at another location, it appears that an implicit aspect of Article 21.8 is that when an employee is required to move at the instance of the Company reasonable expenses are payable. Where, on the other hand, the move is at the employee's election, they are not.

The facts in the instant case are, in the Arbitrator's view, indistinguishable from those of an employee who bids on a bulletined position for the purposes of the application of Article 21.8. In the instant case, because the position was expected to be temporary, it was not bulletined. Rather, the grievor was approached verbally and agreed to take it. I do not see how he could be in a better position with respect to the payment of expenses than would have been the case if the position had been bulletined. In either case he was under no obligation to move and incur the expenses for which he now claims reimbursement.

For the foregoing reasons the grievance must be denied.

April 14, 1989

**(Sgd.) MICHEL G. PICHER**  
**ARBITRATOR**