

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2080

Heard at Montreal, Tuesday, 11 December 1990

concerning

CANADIAN PACIFIC LIMITED

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Loss of earnings incurred by Mr. Réjean Trottier while he was trying to establish himself on a permanent position in accordance with Article 25.2 of the Collective Agreement and the agreement on the consolidation of seniority lists dated 14 April 1989.

JOINT STATEMENT OF ISSUE:

During the week of February 19 to 26, 1990 inclusive, Mr. R. Trottier tried to establish himself on a permanent position in three (3) different departments or services as follows:

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| - February 20 and 21 | Investigation Services |
| - February 22 | Intermodal |
| - February 23 and 26 | Building Services |

The Union maintains that Mr. Trottier should not be subject to loss of earnings given that he complied with the requirements of the employer and of the Collective Agreement concerning displacements.

The Union claims one day's wages each for February 23 and February 26 from Building Services.

The Employer has refused payment.

FOR THE UNION:

(SGD.) C. PINARD
FOR: GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. A. EDGE
MANAGER, FACILITY OPERATIONS

There appeared on behalf of the Company:

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| P. Pannitti | - Recruitment Specialist, Industrial Relations, Montreal |
| J. L. Durand | - Assistant Manager, Building Services, Montreal |
| R. Laroche | - Inspector, Personnel, Investigation Services, Montreal |
| D. J. David | - Labour Relations Officer, Industrial Relations, Montreal |

And on behalf of the Union:

- | | |
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| C. Pinard | - General Secretary/Treasurer, Vice-General Chairman, Montreal |
| J. Manchip | - General Chairman, Montreal |
| D. J. Bujold | - National Secretary/Treasurer, Ottawa |
| R. Trottier | - Grievor |

AWARD OF THE ARBITRATOR

This is a grievance relative to the payment of wages to the grievor for the period between February 19, 1990, the date Mr. Trottier was laid off, and February 27, 1990, the date of his return to work in his new function as concierge, after the exercise of his seniority. The Union maintains that he is entitled to his wages during the time when he was seeking other employment with the Company. It is agreed that between February 19 and 27, he unsuccessfully took tests and was interviewed in both the Security and the Intermodal Departments and that, finally, his return to work, in the Building Services Department, was delayed one day while waiting for a medical certificate.

The Union could direct the Arbitrator to no article in the Collective Agreement which gives to an employee the right to receive his wages after his displacement during the period when he is seeking to exercise his seniority. Article 25.2 of the Collective Agreement reads, in part, as follows:

25.2 ... Within five calendar days of the date his position is abolished or within ten calendar days if he is displaced, such employee shall notify the appropriate Company Officer of the position to which he will exercise his seniority and he shall fill that position within five calendar days of date of notification; ...

In view of this article, it is evident that a displaced employee is not obligated to claim a new position in accordance with his seniority for ten days. The Union's representative agrees that an employee cannot claim his wages if he has made no effort to obtain a new position. However, he states, an employee does not have to suffer any loss of earnings if he takes all necessary steps to displace onto another position.

The Arbitrator cannot accept that argument. It seems evident to me that the Company's obligation to pay the salary of an employee in so exceptional a circumstance must be clearly expressed in the wording of a collective agreement. In the instant case, the Collective Agreement does not give to an employee any right to payment of his salary while on lay off or while displaced. On the contrary, the rights of the employees regarding the treatment which they are entitled to receive concerning lay off and in the circumstances where they are able to avail themselves of their job security are well defined. On the whole, I cannot conclude that the Collective Agreement makes provision for the uninterrupted payment of wages to an employee who, over several days, seeks to exercise his seniority.

For these reasons the grievance must be dismissed.

December 14, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR