

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2118

Heard at Montreal, Thursday, 14 February 1991

concerning

ONTARIO NORTHLAND RAILWAY

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Request for maintenance of an incumbency rate of pay for Clerk H. Sullivan.

JOINT STATEMENT OF ISSUE:

As a result of a staff reduction, the Rate 5 position held by Clerk H. Sullivan was abolished. She exercised [her] seniority to displace a Rate 4 employee rather than bid to a vacant Rate 5 or higher position.

The Union maintains that Ms. Sullivan is entitled to the maintenance of her Clerk 5 rate of pay while holding a Rate 4 position.

The Company does not agree with the Union's contention and refuses to pay the incumbency.

FOR THE UNION:

(SGD.) E. FOLEY
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) P. A. DYMENT
PRESIDENT

There appeared on behalf of the Company:

M. J. Restoule – Manager, Labour Relations, North Bay
G. Knox – Director, Human Resources, North Bay

And on behalf of the Union:

E. Foley – General Chairman, TCU, North Bay
D. Gillespie – Vice-General Chairman, North Bay

AWARD OF THE ARBITRATOR

The material establishes that Ms. Sullivan declined to exercise her seniority to a number of vacant Rate 5 or higher positions. While some of these positions might have brought her under the supervision of a person under whom she maintains it would have been too stressful for her to work, or in the timekeeping department which her psychologist claims would also be too stressful, others clearly were not in either of these categories. It does not appear disputed, for example, that two positions in the purchasing department were available to her. It also appears established that to whatever extent more generous treatment had been given to another employee, that ceased following the Union's pursuit of this grievance.

In the circumstances the Arbitrator is compelled to conclude that Ms. Sullivan failed to bid on higher rated positions which she had the physical capacity to perform and for which she was qualified. In the circumstances, her claim for the maintenance of Clerk 5 rate of pay while holding a Rate 4 position cannot be sustained. The grievance is therefore dismissed.

February 15, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR