

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2443

Heard in Montreal, Wednesday, 12 January 1994

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

CanPar employee Rodney Dean, Orillia, was laid off and a junior employee, Mr. Lee, was allowed to work.

JOINT STATEMENT OF ISSUE:

On or about January 11th, 1993, Mr. Dean was laid off and a junior employee, Mr. Lee, was allowed to work.

The Union asserts that Mr. Dean did file a grievance when he was advised to do so, as when he inquired why the junior man was working he and the other employees at Orillia were told by the Supervisor K. Killingbeck that Mr. Lee was a Lead hand and had one more day's seniority than any other employee.

The Company denied the Union's claim stating that the Supervisor did not state this and the grievance was out of time and further Mr. Dean was not qualified.

The Union further asserts that Mr. Dean was qualified and is entitled for all lost time.

FOR THE UNION :

(SGD.) D. J. DUNSTER
EXECUTIVE VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) P. D. MacLEOD
DIRECTOR, HUMAN RESOURCES

There appeared on behalf of the Company:

M. D. Failes – Counsel, Toronto
B. F. Weinert – Director, Labour Relations, CPET, Toronto
K. Killingbeck – Area Supervisor, Oshawa/Orillia

And on behalf of the Union:

P. Sadik – Counsel, Toronto
G. Rendell – Division Vice-President, Toronto

AWARD OF THE ARBITRATOR

The timeliness of the instant dispute turns on the application of article 5.3.1 of the collective agreement, which reads as follows:

An employee whose position is abolished or who is displaced from his position must displace, within 2 working days, a full-time junior employee in his local seniority group for whose position he is qualified. An employee who fails to comply with said time limit shall not have the right to return to service by displacing a junior employee.

The grievor was laid off on January 11, 1993. At that time the lead hand position was held by a junior employee, Mr. Larry Lee who was still being trained in that position. It is common ground that Mr. Dean did not seek to displace Mr. Lee within two working days of the abolishing of his job.

The Union seeks to justify the delay in the grievor's claim in the fact that Terminal Supervisor Carl Killingbeck had, several weeks previously, made a statement to the employees at the Orillia terminal to the effect that the lead hand enjoyed a form of super seniority. Upon a close review of the evidence, the Arbitrator cannot sustain the Union's position. It is not disputed that Mr. Killingbeck in fact relayed to the employees, at the time the lead hand position was open for bids, that at the Oshawa terminal the lead hand had not been laid off in preference to senior employees and that a grievance filed by the Union in respect of that incident had been withdrawn. On balance, I am satisfied that at most, Mr. Killingbeck was expressing his own experience with respect to the treatment of a lead hand in a specific situation, and was not purporting to make representations which were binding upon the Company, or upon which the Union could ground an equitable argument with respect to the cause for delay in the filing of the instant grievance.

In the result, I am satisfied that the grievance cannot be entertained, as the grievor failed to seek to displace Mr. Lee within two working days, as provided under the terms of article 5.3.1 of the collective agreement. Further, if it were necessary to so conclude, I would not accept the suggestion of counsel for the Union that Mr. Dean possessed the qualifications for the lead hand position. I accept the representations of the Company that in the case at hand the lead hand functions are relatively complex as they relate to the immediate supervision of all operations at Orillia. Additionally, recent prior discipline assessed against the grievor for the falsification of Company records would seriously undermine his claim to qualification.

For all of the foregoing reasons the grievance must be dismissed.

14 January 1994

(sgd.) MICHEL G. PICHER
ARBITRATOR