

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2446

Heard in Montreal, Thursday, 13 January 1994

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Eligibility of Mr. K.B. Lane for Employment Security.

JOINT STATEMENT OF ISSUE:

Prior to the closure of the Newfoundland Railway, the Company issued an article 8 notice dated June 22, 1988. In the same year, a Special Agreement was signed which postponed the necessity for affected employees to exercise their seniority pursuant to article 7 of the ESIMP for a period of five years. Upon the expiration of this five year term, a number of Newfoundland employees moved to the mainland and, as a result, Mr. Lane was laid off on April 2, 1993.

The Union contends that: 1.) The effective date for calculating Mr. Lane's cumulated compensated service (CCS), in order to determine his employment security rights, is the date when the Article 8 notice affected him. This date is April 2, 1992, the date of his lay-off. Consequently the grievor has more than the required 8 years' CCS and should be afforded the opportunity to exercise his consolidated seniority. 2.) The grievor is not precluded from exercising consolidated seniority by virtue of the fact that he did not hold a permanent position in the Engineering work force.

The Union requests that: Mr. Lane be allowed to exercise his Consolidated Seniority in Agreement 10.1 and Supplementals thereto and be compensated for all lost wages and benefits resulting from the Company's actions.

The Company denies the Brotherhood's contentions and declines its request.

FOR THE BROTHERHOOD:

(SGD.) R. A. BOWDEN
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) W. T. LINEKER
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

N. Dionne	- Manager, Labour Relations, Montreal
M. Hughes	- System Labour Relations Officer, Montreal
A. L. Marshall	- Engineering Officer, Moncton

And on behalf of the Brotherhood:

P. Davidson	- Counsel, Ottawa
R. A. Bowden	- System Federation General Chairman, Ottawa
G. D. Housch	- Vice-President, Ottawa
D. W. Brown	- Senior Counsel, Ottawa

AWARD OF THE ARBITRATOR

At the hearing the Company advised the Arbitrator that it does not dispute the first contention of the Brotherhood, with respect to the effective date for calculating the grievor's cumulative compensated service. It

agrees that April 2, 1993, the date of the grievor's layoff, is the appropriate date for assessing cumulative compensated service with respect to determining his employment security rights. The Arbitrator therefore finds and declares that the first contention of the Brotherhood expressed in the Joint Statement of Issue is correct.

The issue remaining is whether the grievor is precluded from exercising consolidated seniority by reason of his status as an employee holding a temporary position at the time of his displacement. For the reasons expressed in **CROA 2445** the Arbitrator is satisfied that as a temporary employee Mr. Lane is entitled to the protections of the ESIMP, and that he is therefore entitled to exercise consolidated seniority in the circumstances disclosed. The Arbitrator so declares, and directs that Mr. Lane be compensated for any wages and benefits lost by reason of the denial of his rights.

14 January 1994

(sgd.) MICHEL G. PICHER
ARBITRATOR