

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2605

Heard in Montreal, Wednesday, 12 April 1995

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL  
WORKERS UNION OF CANADA (CAW-CANADA)**

### **DISPUTE:**

Seniority date to be accorded D.J. Wallbank, B.A. Loret, A. DiNunzio and J. Gabriel employed as Dispatchers at Brampton Intermodal Terminal and governed by the supplemental collective agreement governing employees of CN Intermodal.

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

On December 2, 1994, the supplemental agreement governing employees of CN Intermodal came into effect on the Great Lakes Region.

In signing the supplemental collective agreement, the parties agreed that the work of truck dispatch would fall under the scope of the supplemental collective agreement and would be performed by employees working in the classification of Dispatcher.

Prior to the effective date, the four employees cited herein had worked in the management capacity of Equipment Controllers and, in that capacity, had performed the work of truck dispatch which now falls under the scope of the supplemental collective agreement. These employees are now covered by the supplemental collective agreement and work in the classification of Dispatcher.

Paragraph 7.12 of the supplemental collective agreement reads:

7.12 The seniority status of an employee transferred with their work from a staff not covered by this collective agreement to a staff covered by this collective agreement shall be decided by mutual agreement between the proper officer of the Company and the Regional Vice-President of the Brotherhood. The basis of such decision shall be the seniority to which they would have been entitled had their service on such other staff been governed by the terms of this collective agreement.

The parties have not been able to attain mutual agreement as to the seniority status of the four employees cited herein.

It is the Company's position that these employees must be accorded seniority as if their previous service performing the work of truck dispatch had been governed by the terms of the collective agreement.

The Union disagrees.

The parties to this dispute are requesting that the Arbitrator rule on the issue of the seniority of the four employees, consistent with the provisions of paragraph 7.12 of the supplemental collective agreement, and agree that his decision shall be final and binding.

**FOR THE UNION:**

**(SGD.) A. S. WEPRUK**  
**NATIONAL COORDINATOR**

**FOR THE COMPANY:**

**(SGD.) J. B. BART**  
**MANAGER, LABOUR RELATIONS**

There appeared on behalf of the Company:

J. B. Bart – Manager, Labour Relations – Marketing, Montreal  
R. Faucher – Labour Relations Officer – Marketing, Montreal

And on behalf of the Union:

R. Chapman – Local Chairman, Toronto  
K. Goulet – Grievance Officer, Toronto

**AWARD OF THE ARBITRATOR**

The instant grievance turns upon the application of article 7.12 of the supplemental agreement which governs the terms and conditions of employment of bargaining unit employees in intermodal service. It is common ground that the dispute relates only to grievors Wallbank, Lorette and Gabriel, as Mr. DiNunzio has left the employment of the Company.

The employment history of the grievors is not in dispute. Mr. Wallbank was first hired as a new employee under collective agreement 5.1 on October 2, 1972. On April 28, 1986 he was promoted to a permanent management position of Equipment Controller at the Brampton Intermodal Terminal (BIT) performing truck dispatch. By reason of his departure from the bargaining unit under collective agreement 5.1 he ceased accumulating seniority under that agreement effective April 28, 1988. On April 28, 1991 he lost all seniority accumulated under agreement 5.1, by reason of the application of article 11.9 of that agreement. On December 2, 1994 he was transferred to the bargaining unit, and assigned to the newly established position of Dispatcher. On the basis of the evidence the Arbitrator is satisfied that the work performed in the bargaining unit position is identical to the work which Mr. Wallbank performed as an Equipment Controller, and that it can fairly be said that he transferred to the bargaining unit with his work.

Ms. Lorette was hired on October 1972 as a Carload Clerk under collective agreement 5.1. On December 14, 1984 she was promoted to a temporary non-scheduled position of Analyst. Thereafter, on February 1, 1986 she was promoted to the permanent management position of Equipment Controller at BIT, also performing truck dispatch. She ceased to accumulate seniority under agreement 5.1 on February 1, 1988 and lost all accumulated seniority effective February 1, 1991. She too was transferred to the bargaining unit with her work, in the classification of Dispatcher, effective December 2, 1994.

Ms. Gabriel was hired on September 4, 1979 as a Clerk Stenographer under collective agreement 5.1. On May 6, 1985 she was promoted to a non-scheduled position of Senior Stenographer. She reverted to her bargaining unit position effective March 10, 1986 and, it may be noted, did so without any loss of accumulated seniority. On March 3, 1989 Ms. Gabriel was promoted to the permanent management position of Equipment Controller at BIT, also assigned to truck dispatch. She ceased accumulating seniority under collective agreement 5.1 on March 3, 1991 and lost accumulated seniority effective March 3, 1993. She too was transferred to the bargaining unit with her work, in the classification of Dispatcher effective December 2, 1994.

The issue to be resolved is whether the three employees who are the subject of this grievance are, as the Company contends, to be assigned seniority dates which refer back to their original date of hire with the Company for the purposes of the supplemental agreement.

It is not disputed that in establishing original seniority for seniority groups under the new supplemental agreement the parties agreed to accord original relative seniority on the basis of the full employment seniority of individuals. In other words, the seniority which an employee had under collective agreement 5.1 would effectively transfer with him or her into the new seniority group under the supplemental agreement. A management employee transferring into the bargaining unit under the new supplemental agreement would carry original date of hire seniority into his or her position in the bargaining unit if he or she had not forfeited seniority by the operation of the terms of collective agreement 5.1. On the other hand, members of the management staff whose seniority under collective agreement 5.1 had been forfeited by the operation of that agreement, would transfer into the bargaining

unit under the new supplemental agreement with the seniority status of new hires as of the date of transfer, if their work did not transfer with them.

In the Arbitrator's view the instant matter can be resolved on the basis of the relatively clear language of article 7.12. The Arbitrator must be guided by the second sentence of the article which provides: "The basis of such decision shall be the seniority to which they would have been entitled had their service on such other staff been governed by the terms of this collective agreement."

In the Arbitrator's view what the foregoing sentence contemplates is that persons who are transferred into the bargaining unit with their work from a position not covered by the agreement are entitled to have the seniority standing under the supplemental agreement which they would have if their previous service not under the collective agreement was treated as though it had been under it. In the case of Mr. Wallbank, therefore, the time which he worked as an equipment controller at BIT should be treated as time worked under the collective agreement. If that is so, he should not, in the Arbitrator's view, be viewed as having forfeited his seniority for the purposes of determining his relative seniority standing under the supplemental agreement. Had his work as an equipment controller commencing in April of 1986 been treated as work within the bargaining unit he would not have lost his seniority under collective agreement 5.1. If the sequence of his employment is viewed in a manner consistent with the language of article 7.12, he must be treated as an employee who has continuous seniority from October 2, 1972 for the purposes of determining his seniority under the supplemental agreement. To use the language of the final sentence of article 7.12, had Mr. Wallbank's service on the equipment controller job been governed by the terms of the supplemental agreement, he would have been entitled to seniority dating from October 2, 1972. On that basis, the Arbitrator is satisfied that the position advanced by the Company is correct as regards Mr. Wallbank.

Based on the same reasoning, the Arbitrator accepts the position of the Company in respect of Ms. Lorette, whose seniority date for the purposes of the supplemental agreement shall be October 10, 1972 and Ms. Gabriel, who shall have a seniority date of September 4, 1979.

It should be stressed that the above conclusions are based on the agreement of the parties with respect to back-crediting seniority for establishing relative group seniority upon the inception of the supplemental agreement, and that different principles may well govern the seniority status of future transfers.

April 20, 1995

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