CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3034

Heard in Montreal, Wednesday, 10 February 1999

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

Refusal by the Company to bulletin 3 new routes.

EX PARTE STATEMENT OF ISSUE:

On the south shore area of Montreal the Company was using non-bargaining unit employees and in September 1996, they decided to make changes.

On or about October 2, 1996, the Company established three (3) new routes on the south shore of Montreal without posting bulletins.

The Union contends that by acting that way the Company prevented senior employees from applying on new working hours and new routes.

The Union requests that the three (3) new routes be bulletined.

The Company denies the Union's contention and declines the Union's request.

FOR THE UNION:

(SGD.) R. NADEAU
DIVISION VICE-PRESIDENT

There appeared on behalf of the Company:

P. D. MacLeod	– Vice-President, Operations, Toronto
R. Dupuis	– Regional Manager, Quebec

And on behalf of the Union:

R. Nadeau	– Divison Vice-President, Quebec
D. Deveau	– National Secretary-Treasurer, Ottawa

AWARD OF THE ARBITRATOR

It is not disputed that the Company assigned the three new routes on the south shore of Montreal to bargaining unit employees. The thrust of the grievance is the Union's position that the routes in question should have been posted by bulletin for bid by the employees at the Montreal Terminal on the basis of their seniority.

Two prior decisions of this Office considered the issue of the right of employees to claim particular routes on the basis of their seniority. In **CROA 1995** an employee whose position was abolished claimed the right to displace to the assignment or route of the employee of his choice who was junior to him. The Company took the position that he could not so exercise his seniority, and must displace the junior employee of the Company, consistent with the then language of article 5.3.1 of the collective agreement. This Office sustained the position of the employer. In so doing the Arbitrator gave consideration to article 5.2.14, which establishes that routes are to be numbered and assigned to a specific driver on a continuing basis. The Arbitrator dealt with that aspect of the history of this issue in the following way:

> Counsel for the Company explains that this article was added to the agreement in 1986, in response to a request by the Union which sought to obtain for its members who were driver representatives, a certain right of ownership to their routes. He emphasizes, however, that the establishment of numbered routes has no significance for job bulletining purposes. In other words, according to the Company, a route is not a position. The assignment of a route is never bulletined and remains at all times a discretionary decision of the employer, subject only to the terms of Article 5.2.14.
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> The Arbitrator must accept the position of the Company. In light of the terms of Articles 5.3.1 and 5.2.14, it appears clear that the parties agreed not to include the right to a particular route among the rights and obligations which constitute a position. The evidence establishes that since the first Collective Agreement in 1977, the establishment or elimination of a route was never treated as the same as the assignment or abolishment of a position within the terms of Article 5.3.1. That is to say that throughout the duration of several collective agreements the application of the terms of Article 5.3.1 conformed to the position of the Company in the instant case and has never been the subject of a grievance. …

Subsequently, in **CROA 2597** it was found that an employee whose work was transferred from Prescott to Kingston could not displace the junior employee of his choice at Kingston. The arbitrator disallowed the grievance, finding that the collective agreement contemplates a displaced employee bumping into the bulletined position of another employee, but not into a specific route. Job bulletins, as distinguished from routes, describe the position in terms relating to hours of work, the class of service and equipment operated, rates of pay, days off and the like, without any specific reference to a particular route. In **CROA 2957** the award reasoned, in part, as follows:

> While the Arbitrator can appreciate the motives which underlie the grievance, and the logic of the argument made by Counsel for the Union suggesting that senior employees should have the right to displace the employee of their choice, thereby assuming access to his or her work, the language of the collective agreement, and the history of bargaining between the parties leads to another conclusion. For reasons which they must best appreciate, the parties have never incorporated provisions into their collective agreement which would allow employees to bid on routes on the basis of seniority. That issue remains a contentious difference between them, and in the circumstances, having regard to the history of the collective agreement, and to the principles reflected in *CROA 1995*, I am satisfied that it would require clear and unequivocal language in the terms of the collective agreement to confirm the interpretation now advanced by the Union. Such language is not to be found. In the result, I am compelled to prefer the interpretation of the Company, which is that the grievors were entitled to displace to positions of junior employees at Kingston, but that their rights under article 5.3.2 do not attach to the election of any particular route. To put it differently, there is nothing within the language of article 5.3.2 which derogates from the overriding discretion of the employer to assign routes, and to do so without regard to seniority, subject only to the terms of article 5.2.14 of the collective agreement. In the result, therefore, no violation of the agreement is disclosed.

Following the foregoing award, the parties renegotiated their collective agreement and made certain amendments material to this grievance. Article 5.2.14 dealing with number routes remains within the agreement. Additionally, the following two provisions appear:

> **5.3.1** 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.
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> **…**
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> **5.3.4** Whenever there is a permanent abolishment of an employee's route, the following procedure shall apply:
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> **(a)** the employee on the route shall be entitled to select any route of his choice provided that the route is being done by a junior employee;
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> **(b)** the new route becomes the senior employee's regular Numbered route to which he is assigned under 5.2.14;
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> **(c)** this process shall be repeated for the junior employee who has lost his route until all routes in the terminal are assigned;
>
> **(d)** if an employee displaces another junior employee in another terminal under article 5.3.2 or 5.3.3, then the procedure set out in paragraphs (a) to (c) shall be followed in that terminal as well.
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> Permanent abolishment shall include a suspension or elimination of a route for any period exceeding three months but does not include the addition or deletion of stops on a route.

The Union's submission is that the above provisions, read as a whole, support the inference that the parties intended to imply that employees have the right to claim specific routes by the exercise of their seniority where, as an in the instant case, those routes are newly established by the Company. The Company denies that interpretation, and stresses that nothing in the amendments to the collective agreement made in 1995, in particular the language of article 5.3.4, can be construed as broadly as the Union suggests.

The Arbitrator is compelled to agree with the Company. On the basis of the decisions of this Office in **CROA 1997** and **2597**, the parties renegotiated their collective agreement on the settled understanding that employees could not, based on the prior language of the collective agreement, assert the right to bid on routes on the basis of their seniority. Against that background what did they negotiate? In the Arbitrator's view it is clear that what was negotiated was a limited right of employees to bid routes on the basis of their seniority. As is clear from the initial sentence of article 5.3.4, that circumstance is limited to "whenever there is a permanent abolishment of an employee's route …". It is in that circumstance, and that circumstance alone, that the collective agreement gives an employee the right to displace to another route on the basis of his or her seniority. On the facts of the case at hand, there was no route abolishment and, quite clearly, no denial of the right of any employee with an abolished route to claim the newly established routes or on any other route. There was, in other words, no factual situation which would give rise to the exercise of the right newly established within article 5.3.4 of the collective agreement.

In approaching this issue the Arbitrator bears in mind that the parties are sophisticated in negotiating the words of their collective agreement, as demonstrated over a long-standing bargaining relationship. Had they intended to provide that employees are entitled to bid vacant routes, or newly established routes, or any routes on the basis of their seniority in circumstances other than the abolishment of an employee's route, they could obviously have done so. Similarly, if they had intended to do away with the distinction between a "position" dealt with under article 5.3.1 and a "route" dealt with under article 5.3.4, they could likewise have done so. There is, however, no language within the collective agreement to suggest that they ever agreed upon such an intention.

For the reasons originally noted in **CROA 2597**, the Arbitrator can appreciate the perception and concern which motivates the Union's desire to gain for its members the right to bid routes on the basis of seniority. It is just as easy, however, to appreciate the concern of the Company which seeks to avoid a continuous ripple effect in its operations whenever one or more routes becomes vacated or newly established. Needless to say, it is for the parties through the process of negotiation, and not this Office which must interpret the collective agreement as it finds it, to fashion the conditions to a solution to this ongoing difference.

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

February 12, 1999

(signed) MICHEL G. PICHER
ARBITRATOR