

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3035

Heard in Montreal, Wednesday, 10 February 1999

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Interpretation and application of article 5.3 (Reduction in Staff).

JOINT STATEMENT OF ISSUE:

In March, Mr. A. Marchetta was informed that he was displaced from his position by a senior employee (DeBellefeuille).

On March 14, 1997 Mr. Agostino Marchetta wrote to Mr. Dean Cardi and informed him that according to article 5.3 he will displace a junior employee effective March 17, 1997 by the name of Mike Vegh.

On March 18, 1997 Mr. D. Cardi informed the grievor that his request was refused and he had no choice than to displace the junior man at 8:30 a.m. by the name of Charles Doyon.

The Union's interpretation is that an employee who is displaced from his position must displace within 2 working days, a full-time junior employee of his choice in his local group for whose position he is qualified.

The Union's request is that Mr. Marchetta displace junior employee M. Vegh plus reimbursement of all wages, overtime and interest due to him if he had held the position.

The Company rejected the Union's request.

FOR THE UNION:

(SGD.) R. NADEAU
DIVISION VICE-PRESIDENT

FOR THE COMPANY:

(SGD) P. D. MACLEOD
VICE-PRESIDENT, OPERATIONS

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 – Division Vice-President, Quebec
D. Deveau – National Secretary-Treasurer, Ottawa

AWARD OF THE ARBITRATOR

The issue in this grievance is whether the grievor, Mr. A. Marchetta, was entitled to displace onto the route of another employee junior to himself.

It is common ground that in March of 1997 Mr. Marchetta, who was then working as a city tractor-trailer driver in the Montreal terminal, was displaced from his position by the return of a senior employee from a leave of absence occasioned by a work related injury. The circumstances of the returning employee's claim to work was separately considered by this Office in **CROA 2810**, which confirmed the right of the returning employee, Mr. Sylvain DeBellefeuille, to displace into the position of Mr. Marchetta.

In support of the right of Mr. Marchetta to claim the route of his choice, the Union's representative invokes the following provisions of the collective agreement:

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.

...

5.3.4 Whenever there is a permanent abolishment of an employee's route, the following procedure shall apply:

- (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;
- (b) the new route becomes the senior employee's regular Numbered route to which he is assigned under 5.2.14;
- (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.

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.

In its written submission to the Arbitrator the Union submits that the issue of bidding routes was a contentious one between the parties which the Union sought to resolve during the last round of bargaining. It makes the following submission, in part:

Consequently, the parties reached a memorandum of agreement whereby there is now clear and unequivocal language giving employees whose positions are abolished, laid off, or displaced, the right to select a route of their choice, under the criteria outlined in the new article 5.3.4. Mr. Marchetta clearly had the right to displace Mr. Vegh as he indicated on his written request to exercise his seniority. Mr. MacLeod, in his reply at Step 2 (Tab 5) has stated "The grievance is denied. This is about picking which run he wants. Mr. Marchetta was laid off from his linehaul position and exercised (his) seniority onto a P/D position. That does not include the right to pick the run." The Union argues that Mr. MacLeod is wrong in his interpretation. Article 5.3.4 expressly gives the right, under these circumstances, for Mr. Marchetta to "choose" his run or route.

With the greatest respect, the Arbitrator cannot sustain the position advanced by the Union in this grievance. The Union's position refuses to recognize the distinction between a "route" and a "position" in the collective agreement. To suggest that the grievor can exercise rights under article 5.3.4 in the instant case, where he was displaced from his *position* as a city tractor-trailer driver, and where there is no suggestion that his *route* was abolished, is tortured in the extreme. Mr. Marchetta's rights fall to be determined under the wording of article 5.3.1. He is, within the meaning of that provision, an employee displaced from his position. As such he had the right to displace to the "position" of a junior employee. For reasons confirmed in prior awards of this Office, the concept of a position in this context means the bulletined position held by Mr. Marchetta and by any junior employee he might choose to displace. As noted in **CROA 3034**, the elements of a bulletined position include such factors as the hours of work, days off, classification of service and equipment and rates of pay. Specific routes are not identified as part of a bulletined position, and cannot form part of an employee's displacement claim under article 5.3.1 of the collective agreement.

For the foregoing reasons the grievance must be dismissed.

February 12, 1999

(signed) MICHEL G. PICHER
ARBITRATOR