

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4257

Heard in Calgary, November 13, 2013

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNITED STEELWORKERS – LOCAL 2004

DISPUTE:

Claim for lost earnings on behalf of John Kolodzinski 175978 for the period January 1 to April 2, 2012.

JOINT STATEMENT OF ISSUE:

Between January 1, 2012 and April 2, 2012 employee J. Cruz was assigned to work on Track Services Gang RW42. The Union contends that the Company should have assigned Mr. Kolodzinski to the Gang because he is senior to Mr. Crus as Assistant Extra Gang Foreman. The Union's position is that the Company was in violation of Article 7, (training) 7.9, Article 8 (Overtime and Calls), Article 16 (Seniority Status and Lists) of Agreement 10.1 and portions of the Memorandum of Agreement surrounding Track Forces Restructuring.

The Union submits that the Company violated the Restructuring Agreement with respect to advertising winter assignments for employees to modify to. The Union requests that Mr. Kolodzinski be made whole, including all loss of overtime earnings, from the period of January 1, 2012 to April 2, 2012.

The Company's position is that there has been no violation of Agreement 10.1 or the Track Forces Restructuring Agreement and has declined the claim on behalf of Mr. Kolodzinski.

FOR THE UNION:
(SGD.) M. Piché
Staff Representative

FOR THE COMPANY:
(SGD.) B. Laidlaw
Manager Labour Relations

There appeared on behalf of the Company:

B. Laidlaw	– Manager Labour Relations, Winnipeg
K. Luke	– Manager Track Services, Winnipeg
R. Campbell	– Manager Labour Relations, Winnipeg

There appeared on behalf of the Union:

M. G. Piché	– Staff Representative, Toronto
G. Colli	– Chief Steward, Prairie Region

AWARD OF THE ARBITRATOR

As reflected in the joint statement, the Union submits that the grievor, Assistant Extra Gang Foreman John Kolodzinski, should have been assigned to work on Track Services Gang RW42 in the period between January 1, 2012 and April 2, 2012. It is common ground that that work was assigned to junior employee J. Cruz.

The material before the Arbitrator confirms that following the conclusion of the work season in 2011 the grievor was placed on a winter assignment at his home location of Regina. That move was in accordance with the terms of the Restructuring Agreement signed in May of 2011. Juan Carlos Cruz, a track maintainer who bid and was awarded an assistant extra gang foreman position prior to restructuring, was not in fact qualified in that position and, in the Company's view, was entitled to be trained in accordance with Appendix C of the Restructuring Agreement. On that basis the Company's manager for Track Services assigned Mr. Cruz to rail gang RW42, knowing that that gang would be working in the Winnipeg area for the winter months and would afford a good opportunity for Mr. Cruz to train as an assistant extra gang foreman on the job. The instant grievance arises, it appears, largely because during the three month period in question Mr. Cruz incurred significant overtime opportunities not available to the grievor in his winter assignment.

It does not appear disputed that the permanent position of assistant extra gang foreman on Gang RW42 is held by an individual senior to Mr. Kolodzinski. The

submission of the Company, which the Arbitrator accepts, is that Mr. Cruz was brought into that gang to allow him to train in the position of assistant extra gang foreman.

The record confirms that the grievor was given a winter assignment in Melville, relatively close to his home location in Regina, in a manner consistent with paragraph 6 of the Restructuring Agreement which provides as follows:

6. Following shutdown of the Gangs at the completion of the work season and after any other work projects that they may be assigned to in Track Services, the Track Services employees will be reassigned for the winter months to the Zones to assist the local Maintenance forces. The Track Services employees will revert to a position under the jurisdiction of the Zone as close as possible to their home location.

There can be no doubt but that the treatment of the grievor was in accordance with the Restructuring Agreement.

In the Arbitrator's view the grievance cannot succeed, because the Company was dealing with Mr. Cruz on the basis of the training provisions established in Appendix C of the parties' agreement. Bearing in mind that the Union bears the burden of proof in these proceedings, I cannot conclude that there was any violation of the Collective Agreement rights of Mr. Kolodzinski on the facts, as disclosed. The assignment of Mr. Cruz to a permanent position, with a possibility of training in that position, is plainly contemplated within paragraphs 1 and 2 of Appendix C of the Restructuring Agreement which provides as follows:

1. The Company will be establishing a number of new permanent positions and will be re-classifying a number of existing permanent positions, at a higher classification (e.g. Machine Operator) through its Track Forces Restructuring initiative.

2. The Company recognizes that under this initiative some employees may lack the qualifications necessary to work on one of these new positions, and they will require training for one of these positions. In this regard the Company is prepared to provide the necessary training to those employees.

In the circumstances I am satisfied that the Company treated Mr. Cruz in accordance with the provisions of the parties' agreement, and that no violation of the rights of the grievor is established on the facts as presented.

For the foregoing reasons the grievance must be dismissed.

November 18, 2013

MICHEL G. PICHER
ARBITRATOR