

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4261**

Heard in Calgary, November 14, 2013

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

**TEAMSTERS CANADIAN RAIL CONFERENCE
RAIL TRAFFIC CONTROLLERS**

DISPUTE:

Appeal of the Company's interpretation of RTC Seniority with respect to abolishment of positions at Rugby Interlocking.

JOINT STATEMENT OF ISSUE:

On September 26, 2012, the Company served notice indicating to the Union its intention to cease operations at Rugby interlocking Tower ("Rugby") in Winnipeg, Manitoba effective January 24, 2013. The Company took the position that 4 of the affected members affected by the notice had displacement rights into Calgary office dovetailing their seniority according to the consolidated seniority list. The Union disputed the Company's position stating that only 1 member held RTC seniority and would therefore be eligible to displace.

The Company's position is that the 3 members in question held the position of RTC Interlocking and therefore had RTC Seniority. The Union's position is that despite having the title of RTC Interlocking they held only Operator's seniority as they had never bid on a Student RTC Bulletin and never taken the RTC training course and never been assigned an RTC Seniority date on the Seniority List.

The Union contends that the Company allowed 1 of the 3 members, Mr. Kelly Allen, whose seniority was in dispute to displace into the Calgary RTC Centre and in the Union's opinion improperly awarded him a position based on his disputed seniority. The Union requests that the Company assign Mr. Allen an RTC Seniority date at the bottom of the Calgary RTC Seniority list based on the completion of his RTC training and re-bulletin any positions Mr. Allen may have been awarded based on his disputed seniority.

The Company disagrees and denies the Union's request.

**FOR THE UNION:
(SGD.) S. Brownlee
General Chairperson**

**FOR THE COMPANY:
(SGD.) M. Thompson
Manager Labour Relations**

There appeared on behalf of the Company:

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| M. Moran | – Manager Labour Relations, Calgary |
| D. Guerin | – Director Labour Relations, Calgary |
| B. Sly | – Director Labour Relations, Calgary |
| E. Tyminski | – Labour Relations Officer, Calgary |

There appeared on behalf of the Union:

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| D. Ellickson | – Counsel, Caley Wray, Toronto |
| S. Brownlee | – General Chairperson, Stoney Plain |
| C. Clark | – Vice General Chairman, Montreal |
| V. Linkletter | – Jr. Vice General Chairperson, Calgary |

AWARD OF THE ARBITRATOR

The record confirms that on September 26, 2012 the Company issued a notice of the abolishment of the positions of some five employees at Rugby Interlocking Tower in Winnipeg. The employees in question all held seniority in the classification of “Interlocking RTC”. It does not appear disputed that that designation was adopted following the abolishment of the former “operator” position. At all material times, therefore, employees in the bargaining unit occupied one of the four following positions as reflected in Article 5.02 of the Collective Agreement:

- i. Assigned RTC
- ii. Permanent unassigned RTC
- iii. Interlocking RTC
- iv. Administration and training

The material before the Arbitrator confirms that as late as September of 2012 the parties maintained separate seniority lists for employees in the RTC category as well as employees in the category of Interlocking RTC, although the seniority list for the latter group remained designated under the historic title “Operator Seniority”. In the result, the dual seniority list indicated, in respect of all employees, the date at which they gained

seniority as an operator or interlocking RTC and the date at which, generally upon qualification, they later attained seniority as a Rail Traffic Controller.

The instant grievance concerns the Union's objection to the treatment of one of the employees whose positions was abolished at Rugby, in Winnipeg, Mr. Kelly Allen. It is not disputed that at the time of the job abolishments Mr. Allen had seniority only on the Operators' seniority list or, more technically, seniority as an Interlocking RTC. It appears that upon the abolishment of jobs in Winnipeg Mr. Allen indicated to the Company his wish to move to work in RTC Operations in Calgary. In fact he was allowed to move to Calgary and to bump an employee classified as an RTC who held RTC seniority more junior than the seniority of Mr. Allen on the Operators seniority list. In effect, the Company allowed Mr. Allen to bump into a position for which he was not qualified, treated him as having RTC seniority based on the date of his Operators seniority and allowed him to train and qualify as an RTC.

The Union submits that the manner in which Mr. Allen was dealt with violates the seniority provisions of the Collective Agreement and the long-standing arrangements whereby Operators or Interlocking RTC's can only gain seniority on the RTC seniority list by becoming duly qualified for that classification. The Union maintains that there could be no basis upon which Mr. Allen, who was not qualified as an RTC, could effectively displace a rail traffic controller in Calgary who may have been hired after Mr. Allen was hired as an Operator in Winnipeg, but who held RTC seniority before he did.

As part of its grievance the Union submits that in fact Mr. Allen should have been laid off and offered the protections of the Income Security Agreement (ISA). Its counsel submits that Mr. Allen could not be forced to Calgary to assume a position into which he was not qualified to bump.

The Company takes the position that as Mr. Allen entered Company service in August of 1991 he was a protected employee under the ISA, with a pre January 1, 1994 entry into service date with the Company. On that basis, it submits that he was entitled to certain rights under the ISA, including the application of his "consolidated seniority date". In that regard it relies on the provisions of Article 3.3 (c) (i) of the ISA which provides as follows:

The consolidated seniority date for an employee shall be the first date that an employee entered a position in the bargaining unit. Employees electing the benefits under this Article, who are unable to hold or displace into a position through the normal exercise of seniority at their location, BST, Region, Area of System, shall be required to exercise consolidated seniority to displace the junior employee who had not completed 8 or more years of CCS or commenced service on or after January 1, 1994, at their location, BST, Region, Area or System.

The Arbitrator has some difficulty with the Company's approach. Whatever the consolidated seniority of Mr. Allen, it cannot be disputed that he had never achieved qualification as a rail traffic controller at the time of the events in question. He was nevertheless forced to Calgary where he bumped a qualified RTC with less consolidated seniority than himself. The Union's representatives point out that that the language of the instant Collective Agreement and ISA are to be contrasted with those found in other bargaining relationships. They point, for example, to SHP 587 which involved the rights of protected employees of the CAW in the mechanical services of the

Company in relation to the implementation of cross crafting among the employees in a number of separate trades. By way of contrast, the Union here notes that in that case

Article 7A .2(d) sub 4 provided as follows:

In the above situation, the protected employee may be required to directly displace the most “junior” unprotected employee at the location (if qualified or can be qualified) in order to avoid the payment of ES benefits and to secure a permanent position.

The Union submits that in effect the Company has attempted to treat Mr. Allen in a manner that would be consistent with the application of the foregoing language, language which it stresses does not exist within the instant Collective agreement or the ISA which binds the parties.

In approaching this dispute I consider it critical to recognize the paramount importance of seniority in any workplace subject to collective bargaining. Given the language of the collective agreement and of the ISA in the case at hand, I can see no basis upon which Mr. Allen, who held no seniority or qualification as an RTC, could displace a junior RTC in Calgary in the circumstances of the instant case. More specifically, I cannot see on what basis it can be concluded that Article 3.3 (c) (i) of the ISA can be used to allow an employee who is not qualified in a given classification to purportedly use consolidated seniority to displace a qualified junior employee on his or her basic seniority Territory, Region, Area or System. As is evident from the contractual language considered in SHP 587, it was open to the parties to establish, should they have wished to do so, that a person in the position of Mr. Allen could displace on the “can be qualified” basis. However no such language exists in the collective agreement before me, nor in the ISA. Nor, it may be added, has the Company addressed me to any

article of either of those documents which would grant to Mr. Allen RTC seniority backdated to the same date as his original operator seniority, as it has purported to do. By taking the course it has, the employer has effectively vaulted Mr. Allen to a point on the RTC seniority list well ahead of the vast majority of rail traffic controllers on the list, many of whom qualified in the classification of RTC long before he did, and none of whom appeared to have had their RTC seniority back-dated to their original operator's seniority, although it does appear that commencing in January of 2002 employees did acquire identical seniority dates on both seniority lists. That appears to be explained by the Company's adopting of an upgrading policy as reflected in a letter dated January 15, 2002 from the Company's Manager Labour Relations addressed to the Union's then General Chairperson, Mr. J. Ruddick.

On the whole of the material reviewed, the Arbitrator is satisfied that the Union's grievance must be allowed. With respect to the remedy, however, this award is limited for the time being to a declaration that the Company departed from the provisions of the Collective agreement and the ISA in the manner by which Mr. Allen was placed into employment as an RTC in Calgary. For now I limit the remedy to that declaration, remit the matter to the parties for further discussion as to the appropriate remedial outcome, and retain jurisdiction in the event of their inability to agree in that regard.

November 18, 2013

MICHEL G. PICHER
ARBITRATOR