

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4308

Heard in Montreal, May 13, 2014

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the denial of Locomotive Engineer JP Anderson's bid to the terminal of Montreal.

JOINT STATEMENT OF ISSUE:

In January 24, 2012, Mr. Anderson was notified that he had been displaced from his permanent assignment as a conductor in Belleville. Mr. Anderson attempted to exercise his seniority by declaring to Montreal as a Locomotive Engineer on assignment MT06, which operates westward out of Taschereau Yard. The Company advised Mr. Anderson was not qualified as he was not bilingual and therefore he was not permitted to declare to Montreal terminal (which includes Taschereau Yard).

The Union contends that the Company has denied Mr. Anderson his seniority rights in the Central Consolidated Seniority District by prohibiting him from exercising his seniority to Montreal and bidding on assignment MT06. The Union seeks a finding that the Company has breached the Collective Agreement and relevant past practice, and seeks an order that the Grievor be made whole, or such other relief as the Arbitrator sees fit.

The Company disagrees with the Union's contentions and denies the Union's request. The Company's position is that as Montreal is a bilingual terminal, its decision is reasonable and not a violation of the collective agreement to require employees to be bilingual.

FOR THE UNION:
(SGD.) R. Caldwell
General Chairman

FOR THE COMPANY:
(SGD.) M. Marshall
Senior Manager Labour Relations

There appeared on behalf of the Company:

D. Gagne	– Labour Relations Senior Manager, Montreal
A. Daigle	– Labour Relations Manager, Montreal
D. Larouche	– Labour Relations Manager, Montreal

There appeared on behalf of the Union:

D. Ellickson	– Counsel, Caley Wray, Toronto
R. Caldwell	– General Chairman, Bancroft

P. Boucher	– Vice General Chairman, Belleville
R. Hackl	– General Chairman, Saskatoon
P. Anderson	– Grievor, Belleville

AWARD OF THE ARBITRATOR

The record confirms that the grievor, locomotive engineer Paul Anderson, held a locomotive engineer's assignment in Brockville since 1995. In 2000, with the closure of the Brockville terminal he proceeded to work out of Belleville as a conductor. When he was displaced off of his permanent assignment as a conductor in Belleville on or about January 24, 2012 the grievor sought to exercise his seniority as a locomotive engineer to work in the third seniority district in Montreal. However the Company denied him the move to Montreal on the basis that he is not bilingual.

It is trite to say that seniority rights under the provisions of a collective agreement are among the most important to any employee as they are typically controlling in respect of such issues as protection against lay-off, job security and bumping rights. For these reasons boards of Arbitration have consistently found that the truncating or reduction of seniority rights or the exercise of seniority rights must be supported by clear and unequivocal language in the provisions of a collective agreement.

In the instant case the grievor holds seniority as a locomotive engineer on the third seniority district, a district which comprises both Belleville and Montreal.

As part of its submission the Company argues that the grievance is not arbitrable, on the basis that since the grievor was displaced as conductor he must, in accordance with the provisions of article 47.18 of the collective agreement, exercise his seniority in the classification to which he was last assigned, namely to a conductor's position.

The Arbitrator considers that objection to be properly taken. It was communicated to the Union in a letter from the Senior Manager of the Labour Relations for the Company dated January 22, 2013. I am compelled to conclude that the position of the Company, which is that the grievor was first required to exercise his seniority to another terminal as a conductor is correct, and is plainly borne out by the language of article 47.18 (a). There is no suggestion before me that the grievor could not exercise his seniority as a conductor on his seniority district, as he was required to do. Clearly, by the operation of article 47 of the collective agreement, the grievor was compelled to first exercise his seniority as a conductor on his seniority district. As he did not do so, I am compelled to agree with the Company's representatives that the matter is simply not arbitrable, based on the facts presented.

For the foregoing reasons the grievance must be dismissed.

May 20, 2014

MICHEL G. PICHER
ARBITRATOR