CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1477

Heard at Montreal, Tuesday, March 11, 1986

Concerning

ONTARIO NORTHLAND RAILWAY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claims of Dining Car employees C. Cook, V. Dominico, P. Kennedy, and D. MacPherson.

JOINT STATEMENT OF ISSUE:

When a number of temporary assignments were cancelled on September 3, 1985, the employees who held such temporary assignments were allowed, in the application of article 12.12, to return to their former classifications on the runs that they had originally chosen. One employee remained in the temporary situation.

The Brotherhood claimed that the employees should have returned to the classification in the crew in which they had been working prior to obtaining the temporary work. The Union entered claims as follows:

Ms. C. Cook – any difference in wages resulting from being displaced to the spareboard from Sept. 3, 1985 to the expiration of the temporary assignment and all days worked in excess of the regular temporary assignment to be paid over and above the guarantee.

Ms. V. Dominico – pay for the trip of Sept. 4 - 5, 1985, also that the trip made on Sept. 6, 1985 be paid over and above the guarantee.

Mr. P. Kennedy – to be paid over and above the guarantee for Sept. 5 - 6 - 7, 1985.

Mr. D. MacPherson – three days pay over and above the guarantee. The claims were denied.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) MARILYNNE PITCHER	(SGD.) P. A. DYMENT
FOR: REGIONAL VICE-PRESIDENT	GENERAL MANAGER

There appeared on behalf of the Company:

A. Rotondo – Manager Labour Relations, North Bay

And on behalf of the Brotherhood:

M. Pitcher – Representative, Don Mills

S. Clifford – Local Chairperson, North Bay

AWARD OF THE ARBITRATOR

There were two difficult problems that were raised in this case that appear to relate to two ostensibly conflicting provisions of the collective agreement. Articles 12.12 and 13.1 of the collective agreement read as follows:

> **12.12** Regularly assigned employees assigned to temporary vacancies shall at the expiration of such temporary employment be returned to their former regularly assigned positions.
>
> **13.1** When staffs are reduced, senior employees with sufficient ability to perform the work will be retained.

In the one situation where an employee bids for a position and is temporarily assigned for a definite term to a position it is my view that article 12.12 clearly contemplates that that employee "shall at the expiration of such temporary employment be returned to their formerly regularly assigned position.".

In the other situation where an employee, for reasons beyond the control of that employee, is displaced from his or her position that employee may elect, as contemplated by article 13.1, to exercise his or her seniority to displace another less senior employee provided qualifications are demonstrated to perform the duties of the position.

Accordingly, in the event an incumbent of a temporary assignment or position is bumped by a more senior employee then the former may also elect to exercise like bumping privileges under article 13.1 to the extent his or her seniority and qualifications permit.

It is my view that the Company has confused these two articles in the manner it has chosen to administer the collective agreement with respect to its employees who hold temporary assignments.

Quite clearly when Ms. Joanisse completed her temporary assignment the Company was duty-bound under article 12.12 of the collective agreement to have returned her to the position she held at the time she was given that assignment. Whether her reversion would have resulted in her displacing an incumbent who was working that assignment is of no consequence. Article 12.12 simple prescribes the procedure that is to be followed in that contingency and that accordingly must be the course of action that should be pursued.

Now, had Ms. Joanisse been displaced by another more senior employee during her tenure while holding the temporary assignment then obviously article 13.1 of the collective agreement would have governed her entitlements. She could obviously select another like assignment to which her seniority and qualifications allowed.

But the Company had no basis, in my view, in allowing Ms. Joannisse to exercise displacement privileges under article 13.1 in a situation where her temporary assignment had expired. In that circumstance her entitlements were governed by article 12.12 and not by article 13.1.

As a result the Company's error triggered a chain of irregular displacement actions that resulted in the improper "bumping" of employees from positions they may have remained entitled to hold.

It is accordingly an appropriate remedy for me to direct the Company and the Trade Union to meet with a view to determining any loss, if incurred, by the employees who were improperly displaced.

I shall remain seized for the purposes of implementation.

(signed) DAVID H. KATES
ARBITRATOR