

**IN THE MATTER OF AN ARBITRATION**

BETWEEN:

**TEAMSTERS CANADA RAIL CONFERENCE  
RAIL CANADA TRAFFIC CONTROLLERS**  
(the "Union")

- and -

**CANADIAN NATIONAL RAILWAY COMPANY**  
(the "Company")

**Re: G. Lefebvre Grievance (Exercise of Seniority)**

**Date/Place of Hearing:** September 15, 2023, Edmonton, Alberta

**Arbitrator:** Cheryl Yingst Bartel

**DISPUTE:**

Alleged denial of Article 35 rights to G. Lefebvre.

**Appearing For the Company:** Suzanne Fusco, Senior Manager, Labour Relations  
Andres Hernandez Gutierrez, Jr. Labour Relations  
Associate

**Appearing for the Union:** Jason Bailey, General Chairman  
Kieran Spencer, Local co-Chair  
Michael Martinson, Vice General Chairperson  
Philippe Masson, Local co-Chair

## **AWARD OF THE ARBITRATOR**

### **Issue and Summary**

- [1] I was appointed by the parties to arbitrate this dispute on an *ad hoc* basis, using an expedited process agreed upon by the parties. This process is similar to that used by the Canadian Railway Office of Arbitration, to which this Arbitrator has recently been appointed.
- [2] Brief written submissions were provided. Oral argument was also very brief; the parties completed argument of all four grievances in approximately one hour. No *viva voce* evidence was received.
- [3] Four grievances were heard on the same day. Three of these four Grievances arose from the Company's move of its Rail Traffic Control ("RTC") work to Edmonton from Montreal. This is one of those Grievances.
- [4] The issue in this Grievance is whether the Company improperly denied the Grievor the opportunity to exercise his Article 35 rights to voluntarily demote back to an RTC position and receive a severance for the abolishment of his position.
- [5] For the reasons which follow, the Grievance is dismissed. I am satisfied the Grievor is unable to satisfy the requirements of Article 35 to exercise voluntary demotion back to an RTC "position" in Montreal or obtain any benefits flowing from the abolishment of that position, "as if" he still held that position. By the time he tried to voluntarily demote, the position in Montreal had been abolished.
- [6] After this decision was initially issued, the Union approached the Arbitrator and requested this Arbitrator clarify her reasoning for both this decision and the *Regallet Grievance*, issued the same day, since transition "work" was still being performed in Montreal.
- [7] This was the first time in over a decade of arbitrating that a party raised an issue for clarification to this Arbitrator after a decision was rendered.

- [8] The Union's written arguments had been very brief, being two paragraphs. Its submissions were: a) that the Company could not impact an employee's rights under the Collective Agreement and decide when it should apply; and b) Management returning to the RTC position has been granted in the past, regardless of the state of jobs or outcome of the move and the Grievor should have been granted his Article 35 rights and given the severance due as per Article 13 of the ESIMA (describe below). At no point did the Union argue that the transitional "work" being performed in Montreal equated to a "position" to which the Grievor could demote back to, under Article 35.
- [9] While the Arbitrator initially considered this to be a "new" argument, upon considerable further reflection and under her retained jurisdiction – and as it does not change the original result - the Arbitrator is prepared to provide further reasoning to clarify her word choice and to address the Union's implied question regarding timing of abolishment and the transitional work.
- [10] This is not offered to address the Union's frustration with the result – which was made obvious to this Arbitrator by the Union representative – but rather to address the confusion that appears to have resulted from a particular word choice of the Arbitrator. An errata has been incorporated into this Award.

### **Background Facts**

- [11] In addition to a Collective Agreement (Agreement 7.1), the Company and the Union are signatories to an Employment Security and Income Maintenance Agreement (the "ESIMA"). The ESIMA is a comprehensive, lengthy document that provides for certain benefits on the happening of certain events, including relocation benefits and severance payments for position abolishment.
- [12] By letter dated November 18, 2019, the Company provided notice to the Union of its intention to transfer RTC work associated with its Northern Ontario District to the RTC center in Edmonton, resulting in a five desk – and 13 swing position - reduction in Montreal. The desks impacted were listed. The positions in

Montreal were to be abolished by this transfer. That letter appended the employees impacted by that change, which did not include this Grievor.

[13] Under Article 8.4 of the ESIMA, the parties agreed that when operational and organization changes occurred under that Article, they would negotiate “on items other than those specifically dealt with in The Plan with a view to further minimizing the adverse effects on employees.” As the Company’s decision to relocate this Northern Ontario District work was an “operational and organization” change as contemplated by Article 8.4 of the ESIMA, the parties entered into negotiations regarding RTC employees impacted by the move.

[14] However, it was not just the Northern Ontario District that was negotiated by the parties through this process, but rather a move of all RTC work based in Montreal: the Southern Ontario District, Metrolinx, Kingston, East Coast/Eastern Quebec/Montreal Area and “Remaining Territory”.

[15] On February 20, 2020, the Company provided to the Union a form of letter agreement summarizing what had been negotiated between them, “in accordance with Article 8.4 of the...ESIMA”. The Union executed the letter, indicating agreement to those terms (the “February Agreement”). This was a detailed agreement regarding benefit and bonus entitlement.

[16] On February 24, 2020 the Company sent another notice to the Union that it intended to “centralize the work performed by the Montreal RTC Center to the RTC Center in Edmonton, which would “result in the abolishment of the jobs in Montreal and the centralization of rail traffic control activities in Edmonton”. A list of employees impacted was appended to this second notice letter. The Grievor was on this list.

[17] This second letter noted the centralization would be staged to ensure there was no interruption in service and provided the same dates for the changes as contained in the February Agreement. The letter indicated the Company would be “prepared to meet in accordance with Article 8, paragraph 8.4 of the ESIMA...”.

However, this Arbitrator was not provided with evidence of any other negotiations under Article 8.4 beyond the February Agreement executed prior to this notice. It is the February Agreement upon which the parties relied.

### **Applicable Provisions**

[18] The following are the relevant articles of the Collective Agreement, the ESIMA and the February Agreement.

#### The ESIMA

##### Article 8.1

(a) [notice provisions for any “Technological, Operational or Organizational change of a permanent nature which will have adverse effects on employees holding permanent positions”]

(b) [notice provisions for “any other permanent change of a known duration”]

(c) **In situations where supervisors or employees holding excepted or excluded positions, return to the bargaining unit** and displace a scheduled employee occupying a permanent position, the employee so displaced will be entitled, if eligible, to the same benefits as employees affected in (a) and (b) above (emphasis added).

##### Article 8.4

Upon request the parties shall negotiate on items, other than those specifically dealt with in The Plan, **with a view to further minimizing the adverse effects on employees. Such measures, for example, may be related to exercise of seniority rights, or such other matters as may be appropriate in the circumstances**, but shall not include any item already provided for in The Plan (emphasis added).

##### Article 13.3

In cases of permanent staff reductions, employees who have two years or more of continuous employment relationship at the beginning of the calendar year in which the permanent reduction occurs may, upon submission of formal resignation from the Company’s service, claim a severance payment as set forth above ...

The February Agreement

Article 2(g)

Those employees transferring to Edmonton will establish a dovetailed seniority on the Edmonton seniority list, as provided by collective agreement 7.1....

Article 2(k)

Employees who choose to relocate, under the provisions of this agreement, must sign an irrevocable declaration of their intent to relocate no later than April 3, 2020.

Article 3

Employees who choose to relocate, under this provisions of this agreement, must sign an irrevocable declaration of their intent to relocate no later than April 3, 2020

Article 6

Except as otherwise addressed in this letter, the provisions of the ESIMA will apply insofar as all other benefit provisions are concerned.

Article 7

This letter of agreement constitutes full and final settlement pursuant to Article 8.4 of the ESIMA with respect to the Company's Article 8 Notice dated February 24, 2020 to transfer the remaining work from Montreal RTC Centre to the RTC Center in Edmonton

The Collective Agreement

Article 35.1

Subject to the provisions of clause (b) of Article 26.1 and (a) of Article 35.1, the name of employees who have been or are promoted from a position covered by this agreement to an official or any other position with the company not covered by a Collective Agreement or who become a representative of the employees, shall be continued on the seniority list and shall continue to retain and accumulate seniority while so employe.

- (a) Employees promoted to a permanent non-scheduled, official or excluded position with the Company subsequent to July 1, 1978, shall continue to accumulate seniority on the seniority list from which promoted for a period two (2) consecutive years...

## Article 35.2

In the event of either being released (except by dismissal) from a position referred to in Article 35.1 **or in the case of employees desiring voluntarily to demote themselves to a position covered by this Collective Agreement, such employees must exercise seniority on the Manager RTCC's Territory from which promoted** and seniority being sufficient, displace the junior regularly assigned RTC in the highest seniority group in which they hold seniority, **provided they do so and commence work within thirty (30) days from date of such release, unless prevented by illness or other cause for which leave of absence is granted...** (emphasis added)

## Article 35.4

Employees who have become physically or mentally unfit to perform the duties to which assigned may, with the concurrence of the proper officer of the Company and the General Chairperson, exchange positions with another employee on the same Seniority and Promotion District holding a position which the disabled employee **is qualified for and able to perform.** Disabled employees placed on a position shall not be displaced by other able bodied employees so long as they remain on that position except when senior employees are otherwise unable to hold a position within their seniority group (emphasis added)

[19] The Company also argued Article 5.7 of Agreement 7.1 was also relevant. It states:

Employees who, while work is available to them under this Agreement, transfer to a position within the Railway under another Agreement, shall continue to accumulate seniority under this Agreement for a period of two (2) years from the date of transfer. Employees who transfer under this Article must return to the permanent unassigned board which covers their former location before being allowed to bid on a position or exercise seniority under this Agreement and will be considered to have vacated their assignments.

## **Facts**

[20] The Grievor was working as an RTC on February 24, 2020 and his name was included in the Appendix to the second notice letter. His position was impacted

by this Article 8.1 change. The Grievor was offered the chance to relocate to Edmonton under February Agreement but chose not to accept that offer.

- [21] Section 1 of the February Agreement outlined certain “Effective dates of Changes” which ranged from June 14, 2020 for the various territories: the Southern Ontario District, Metrolinx, Kingston, East Coast/Eastern Quebec/Montreal Area and “Remaining Territory”, with the effective date for “Montreal Area” work set as September 14, 2020.
- [22] Positions began transferring to Edmonton from late 2019 to August of 2020.
- [23] On April 6, 2020, the Grievor applied to – and was the successful candidate for – a management position as an Assistant Track Supervisor (ATS), supporting the Greater Montreal area. On June 24, 2020, after working for just shy of three months as an ATS, the Grievor commenced a paid, personal leave of absence. On June 30, 2020, the Grievor transitioned to short term disability benefits.
- [24] On August 21, 2020, while still on disability, the Grievor gave notice to the Company that he would like to exercise his Article 35 rights and return to his RTC position.
- [25] The Company denied this request, on the basis that it had either abolished – or was in the process of abolishing - all RTC positions in Montreal and it had no RTC position in Montreal for the Grievor to demote into.
- [26] The Grievor remained on short term disability benefits until he verbally resigned to his manager. His resignation was effective September 12, 2020.

### **Arguments**

- [27] As earlier noted, the Union argued that the Company’s decision to move jobs to Edmonton cannot impact an employee’s rights under the Collective Agreement to exercise his seniority, as the Company cannot decide when the Collective Agreement should apply. It noted that the Grievor was still paying Union dues and had seniority status for a two year period after his move to the ATS position



It noted that requests made in the past for a management employee to demote to an RTC position have been granted, regardless of the state of jobs or the outcome of the move. It argued the Grievor should have been granted his Article 35 rights and should now be given the severance that he was due as per ESIMA Article 13.

- [28] The Company disagreed. It argued that an employees' right to exercise seniority is limited to those positions which are available to them when they exercise that right. The Company noted no RTC positions remained in Montreal. There were no positions left in the bargaining unit to which he could exercise his seniority. It argued that all RTC positions in Montreal were abolished in Montreal and relocated to Edmonton. The Grievor chose not to make that move, which choice limited his ability to work as an RTC for the Company. It argued this intention was communicated to the Grievor in February of 2020 when he was still in the role of an RTC. It also argued that under Article 5.7 of the Collective Agreement that the Grievor must return to the "permanent unassigned board which covers their former location".

### **Analysis and Decision**

- [29] I adopt the principles of contract interpretation which were set out in *CN v. TCRC (Moving Bonus Grievance)*, one of the four disputes heard on the same day as this dispute. That principle provides that words are to be read in their "grammatical and ordinary sense" (sometimes referred to as their "plain and ordinary meaning"), as discussed in that Award.
- [30] I cannot agree with the Company that Article 5.7 has any relevance to this dispute. That Article refers to employees who "transfer to a position within the Railway *under another Agreement...*". In this case, the Grievor did not transfer to a position under another Agreement, but rather to a position in management. I am satisfied it is Article 35.1 which applies, since the Grievor moved into a

management position with the Company. It is not disputed the Grievor continued to accrue seniority, as noted in that Article.

- [31] While Article 35 provides the Grievor an opportunity to voluntarily demote back to an RTC position, it is specific with how that is to be accomplished. Article 35 does not provide a blanket opportunity to demote. The first line of Article 35 states that the demotion is to be to "a position". If there is no "position", there can be no ability to voluntarily demote. Assuming there *is* a position, there are two requirements that then must be met under Article 35: The first is that "*such employees must exercise seniority on the Manager RTCC's Territory from which promoted.*" The second is that the Grievor must *commence work within thirty (30) days from date of such release, unless prevented by illness or other cause for which leave of absence is granted..* The Grievor would be exempted from this second requirement as he was in receipt of disability benefits in August of 2020.
- [32] Considering the "RTCC Territory" referred to in Article 35 – to which the Grievor must demote exists, but not in Montreal. It now is worked from Edmonton. The Union has not suggested the Grievor is ready to take up an RTC role in Edmonton. Rather the Union seeks access to Article 13 severance benefits "as if" the Grievor was a) still an RTC and b) chose to be severed and receive a benefit under Article 13 of the ESIMA.
- [33] While I can appreciate the financial benefit the Grievor would receive if he could access the severance benefits provided to an RTC whose position is abolished *now that he has decided not to continue in his new role with the Company*, I can find no "as if" option in the Collective Agreement, the ESIMA or the February Agreement.
- [34] In the initial Award, this Arbitrator referred to the fact that "When the Grievor changed his mind in August of 2020, there was no opportunity to "return to the permanent unassigned board" at the Grievor's "former location" as there were no jobs at the former location". In what I will call its "supplementary question", the

Union questioned this conclusion, as it noted there were still "active desks" in Montreal and "work available there" and that "the last desk did not move to Edmonton until August 30<sup>th</sup>" - after the Grievor sought to exercise his seniority rights.

[35] In the Union's view, this meant there were "jobs" in Montreal.

[36] Part of the Union's confusion stems from the Arbitrator's use of the word "jobs". The Union has equated "jobs" with the "transitional work" which was being performed under the February Agreement. However, the Arbitrator was not making a reference to that transitional work with the word "jobs". The Arbitrator should have used the word "position". The Arbitrator's decision was that there were no "positions" remaining at the former location.

[37] That said, the Union's question impliedly raises the issue of the *timing* of the position abolishment, by equating the "transitional work" being performed in Montreal with the existence of "positions" in Montreal at that point in time. It would have been most helpful had this position been expressed and argued in the hearing and/or materials.

[38] In my view, the ESIMA and the February Agreement address the Union's arguments regarding timing of the position abolishment.

[39] By Article 8.1 of the ESIMA, the Company was required to give the Union notice of any "operational change". There is no dispute the abolishment of the positions listed in the February Agreement and the move of this work to Edmonton was the "operational change" which triggered that notice.

[40] By Article 8.4 of the ESIMA, once the Company provided that notice of an "operational change" to the Union - in this case the abolishment of RTC positions - the parties were then required to "negotiate the terms" of that operational change, which "*may include exercise of seniority rights*". Article 8 also sets out

a process for how those benefits are to be determined, if the parties cannot agree.

[41] This negotiation is to be "...with a view to further minimizing the adverse effects on employees". In this case, that negotiation resulted in the February Agreement.

[42] I am satisfied that the Company was *required* to reach the February Agreement with the Union under Article 8.4 before it was entitled to abolish the RTC positions. It is the February Agreement between the parties – and not the Collective Agreement - that sets out the schedule for the transition of the work to Edmonton, to allow for coverage of work during that transition. I am further satisfied this schedule was developed due to the need for continuing coverage, given the 24/7 nature of the Company's business.

[43] In terms of the *timing* of position abolishment, I am satisfied that at least by the time the parties had acted in compliance with Article 8.4 of the ESIMA by reaching the February Agreement, the positions were abolished for the purpose of determining benefit entitlement under the ESIMA. The parties had agreed that employees in those RTC roles at that time, who chose to move to Edmonton with those positions, were provided enhanced benefits, which were outlined in the February Agreement, and the transition schedule set out in that Agreement proceeded.

[44] What this practically meant was that if an employee was not in an RTC role when the Company gave its notice, but had an ability to exercise seniority rights to return to a RTC role, he or she could have exercised those rights and made that choice *after* the notice had been given, but before the February Agreement was entered into. Once the notice is given, employees are given the opportunity to choose to return, to gain the opportunities which may be negotiated under Article 8.4, if they want to be considered for those benefits. That type of movement is in fact anticipated by Article 8.1(c).

[45] This interpretation makes practical and labour relations sense. It would be reasonable for the Company to understand how many employees could be subject to the benefits when it negotiated the February Agreement. The fact those employees were not in those roles when the notice was *initially* given does not impact the ability of those individuals who transferred in between the original notice and the execution of the February Agreement benefits, as noted in Article 8.1(c). However, at the point when the February Agreement was executed by the parties in compliance with Article 8.4 of the ESIMA, I am satisfied that Agreement fulfilled the Company's obligations to be able to action its "operational change" – and abolish positions not based in Edmonton and that this was acknowledged by the parties in Article 7 of the February Agreement. The window to voluntarily demote back to an RTC "position" then closed, as those positions were abolished and the transition schedule as agreed was carried out.

[46] While I note that "transition work" was being performed in August of 2020- under the terms of the February Agreement - I cannot agree that equates with a "position" still being available in Montreal for the Grievor to return to. It cannot, since well before August of 2020, the parties had *already* agreed to the benefits which were to be provided to the RTC employees impacted by that "operational change" - which benefits had depended upon the abolishment of the RTC positions – and a deadline had been set by the parties – and had well passed – for employees to advise the Company of their intention to move with that work, in order to access certain enhanced benefits: s. 3. Further, that transition of the work under the terms of that Agreement was in motion.

[47] If an employee *were* allowed to demote back to an RTC *after* that Agreement had been executed – which is the position of the Union - that employee would be well out of time to express any interest in moving to obtain enhanced benefits, as the deadline set by the parties to express that intent had passed. While the Grievor himself did not have an interest in moving to follow the work, the interpretation urged by the Union would not just apply to the Grievor and must

make sense when taken to its logical conclusion. The Union's interpretation does not. The negotiation by the parties of a particular deadline for an RTC employee to express intention to move and access enhanced benefits supports an interpretation that individuals must be in RTC roles *by the time the February Agreement is executed* to access ESIMA benefits which may occur upon the abolishment of that RTC position.

[48] By August of 2020 – five months *after* the February Agreement was executed - the Grievor could not satisfy the requirements of Article 35. There was no "position" left in Montreal under Article 35 for the Grievor to voluntarily demote to by that time. The "operational change" of abolishing the RTC positions had already been actioned, well before that date.

[49] Neither was there any evidence of any employee whom the Grievor could exchange positions with under Article 35.4 – even if the Company and General Chairperson concurred.

### **Conclusion**

[50] The Grievance is dismissed.

[51] Without a "position" in Montreal to demote to, the Grievor is unable to meet the requirement of Article 35.2. I am satisfied that it was:

- a. the Grievor's choice to stay in Montreal;
- b. the late timing of his choice to try to revert back to an RTC; and
- c. the wording of Article 35 requiring a "position" to demote to

that led to this result, and not the Company's decision to move the work.

I retain jurisdiction to address any issues with the implementation of this Award and to correct any errors or omissions to give it the intended effect. My appreciation is offered to the parties for their patience.

**DATED AND ISSUED** this 30<sup>th</sup> day of January 2024; errata issued and incorporated March 5, 2024.

A handwritten signature in blue ink, appearing to read "Cheryl Yingst Bartel". The signature is written in a cursive style with a large initial "C".

Cheryl Yingst Bartel  
Arbitrator