

Grievance Arbitration

R. Fifer

CUTE 1 Submission

GP 2001-86 Laying off of own accord

1. This grievance stems from what CUTE 1 perceives to be a violation of the collective agreement article 1.9.1, which reads....

1.9.1 Road engineers who do not lay off of their own accord will be guaranteed the equivalent of eighty (80) hours per checking period exclusive of pay for General Holidays, training allowance as provided by Clause 30.2, locotrol allowance as provided in Clause 1.3.1, unit allowance as provided in Clause 1.3.2, and Fort Nelson housing allowance as provided by Clause 31.1 excepting engineers on spare board where provision is made so as to regulate an engineer's work week to forty (40) - fifty (50) hours per week. An engineer who lays off of his own accord, or misses a call, will be penalized to the extent of having the hours paid for on the trip, or trips, he missed deducted from the eighty (80) hours guaranteed for the checking period. The number of hours so deducted not to exceed twenty (20) for each round trip or short turnaround trip missed.

2. It is our contention that Mr. Fifer did not lay off of his own accord and is entitled to the hours owing as stated during the grievance procedure. (See appendix 4)
3. On the day in question Mr. Fifer was working a permanent position as a Locomotive Engineer on the "B" assignment of the SQPG freight that runs from Squamish to Lillooet on an "ABC" schedule. (See appendix 1)

4. There is a clear distinction between each of the three positions (A, B, & C), established through the work schedules (days off) and by total earnings that could be expected through working at premium rates of pay on statutory holidays. This schedule is made clear by the relevant job posting contained within Change of card bulletin (General Reassignment) dated August 24th 2001. (See appendix 2)
5. To accept that Locomotive Engineer Fifer laid off of his own accord (as is submitted by the company) by exercising his seniority after being involuntarily displaced is to accept the premise that any time an Assignment goes onto scheduled days off the engineer holding that position would have to be considered to be laying off of his own accord.
6. At no time was engineer Fifer unavailable for duty; it is conceivable that Mr. Fifer could have been called under the spare work agreement on his days off. This begs the question, how could an Engineer be considered as laying off of his own accord if he could have been called for duty?
7. An Engineer working a position does not have any control over the days off established in the bulletin for that position and cannot be considered culpable in laying off due to being on days off or being involuntarily displaced. Mr. Fifer at no time called the crew office and removed himself from duty.
8. The union recognizes that the company has the mandate to control its financial costs subject to the terms and conditions of the Collective agreement. BC Rail issued the bulletin reflecting days off and accepted the financial burden that this may or may not create.
9. These assignments have been in existence through mutual consent since approx. 1987 and have survived several rounds of bargaining. The guarantee provisions of our collective agreement predate 1987 by several years.
10. BC Rail was a willing partner and aware of the possible guarantee liabilities that the ABC assignments might foster and must adhere to our past practice of considering the involuntary displacement and subsequent exercising of seniority as not laying off of ones own accord.
11. Mr. Fifer chose to move to the “C “assignment well with in the confines of article 33.10...

Displaced Engineer

- (1) A displaced engineer will place himself in accordance with schedule rules within twenty-four (24) hours when placing within the same zone, and

within forty-eight (48) hours if placed outside the zone, unless extension is granted by the Crew Supervisor.

12. The subsequent bumping that occurred as a result of Mr. Fifer involuntarily exercising his seniority suggests that there very well could have been an even more substantial cost involved to the company had a proper audit of the bumping stream been taken.
13. The union submits that, had Mr. Fifer been forced to the assignment which may have mitigated his guarantee owing; there is no proof that there would have been any real financial savings to the company.
14. CUTE 1 and BC Rail recently settled a significant number of grievances that stemmed from the company not bulletining positions when those positions went onto days off in order to save guarantee payments. CUTE 1 made the argument which was accepted by BC Rail, that simply because a position goes onto days off does not signify that the position ceases to exist, you are still on that position and it follows that you have not laid off of your own accord, otherwise the positions would have to be re-bulletined for the expiration of days off and the resumption of the work schedule. This would lead to complete anarchy within the work place.
15. CUTE 1 believes that Mr. Colquhoun on behalf of BC Rail admitted culpability in this misdeed by offering to settle this issue with Mr. Fifer through payment of 8 hours. (See appendix 3)

In closing and to capulate:

- a) Mr. Fifer's action was the result of another engineer exercising seniority and not a case of laying off of his own accord.
- b) The position he moved to was distinctive because of its unique schedule and days off.
- c) There is no evidence that there would have been any monetary savings if a full financial audit was performed on the subsequent stream of bumping.

For the above reasons, CUTE 1 seeks resolution that Mr. Fifer had not laid off of his own accord and settlement as outlined. The union respectfully submits the forgoing to the arbitrator.