

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.600

Heard at Montreal, Tuesday, March 8, 1977

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRES, AND STATION EMPLOYEES

DISPUTE:

Union claim Mr. V.P. Trupish, a senior employee should be awarded the position of Regional Clerk and afforded the opportunity to demonstrate his ability to do the work.

JOINT STATEMENT OF ISSUE:

Mr. V.P. Trupish, a senior applicant, applied for the position of Regional Clerk.

The position was awarded to S.O. Matthewman, a Junior employee.

This dispute concerning the application of Article 24.1 has been progressed through the applicable grievance procedures.

FOR THE EMPLOYEE:

(SGD.) R. WELCH
Senior General Chairman

FOR THE COMPANY:

(Sgd.) J. A. SABOURIN
Assistant Director of Accounting

There appeared on behalf of the Company:

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| G. M. Booth | Personnel Officer, Finance & Accounting, CP Ltd., Montreal |
| R. A. Marks | Asst. Manager Disbursement Accounting, CP Rail, Montreal |
| D. Cardi | Labour Relations Officer, CP Rail, Montreal |

And on behalf of the Brotherhood:

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| R. Welch | System General Chairman, B.R.A.C., Vancouver |
| R. C. Smith | National Vice President, B.R.A.C., Montreal |

AWARD OF THE ARBITRATOR

Article 24.1 of the collective agreement, which governs this matter, provides as follows:

"24.1 Promotion shall be based on ability, merit and seniority; ability and merit being sufficient, seniority

shall prevail. The officer of the company in charge shall be the Judge, subject to appeal, such appeal to be made in writing within fourteen calendar days of the appointment."

Since the grievor was a senior applicant for the Job of Regional Clerk he would be entitled (as against any junior applicant) to be appointed to the job provided he had sufficient ability and merit to perform it. The officer of the Company in charge is to judge that question, and in this case the Company's officer considered that the grievor did not have sufficient ability and merit to perform the job. That decision is subject to appeal, and the question now before me is whether it was wrong, and whether it should be held that the grievor did have sufficient merit and ability and should be given the job.

The case for the grievor is based on his previous employment in the same or related positions. He has acted as a Relieving Accounting Clerk, as a Division Clerk at two locations, and indeed as Regional Clerk, the job in question. Experience in the very job in question certainly raises a presumption in the grievor's favour: see Case No. 258. Here, however, that presumption is rebutted by the fact that the grievor did not perform adequately in the Job of Regional Clerk, and was removed from it, no grievance being filed.

It could nevertheless be the case that subsequent experience would qualify an employee for such a position, and one failure should not be taken as disqualifying him forever. At the time of the present application the grievor was working as Division Clerk, a related job only one step below that of Regional Clerk. The grievor had been disqualified as a Regional Clerk on October 22, 1975 (having worked in the position since April of that year). From October 1975 until June, 1976 (with a brief exception) he worked as a Divisional Clerk, and it was in June, 1976 that this application was made. As well, the grievor had had experience as a Divisional Clerk in 1968 and 1969. That earlier experience had apparently not been sufficient to enable him to succeed as a Regional Clerk in 1975, the further eight months' experience as a Divisional Clerk in 1975 and 1976 might have been helpful. It appears, however, that his work as a Divisional Clerk was barely acceptable and that he was experiencing considerable difficulty. This being the case, his experience on that Job can scarcely be taken as supporting the view that he was ready for a higher-rated Job, especially where his problems with the higher-rated job had already led to his removal from it.

In these circumstances the Company's determination would appear to be justified. Certainly the material before me would not permit the setting-aside of the Company's decision and the substitution of a finding that the grievor did have the ability and merit necessary. It must be concluded, then, that there has been no violation of the collective agreement, and the grievance must be dismissed.

J.F.W. WEATHERILL
ARBITRATOR