

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 854

Heard at Montreal, Wednesday, September 9, 1981

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim of A. Galvano for the difference between the Leading Track Maintainer's rate (\$7.663) and the Track Maintainer's rate (\$7.345) for three (3) weeks.

Claim of C. Masse for the difference between the Leading Track Maintainer's rate (\$7.663) and the Track Maintainer's rate (\$7.345) for two (2) weeks.

JOINT STATEMENT OF ISSUE:

Grievors A. Galvano and C. Masse are qualified Leading Track Maintainer. They regularly work and are assigned, as Track Maintainers, to a maintenance gang coming within the jurisdiction of Roadmaster R. Leblanc.

Section Gang No. 9 - LaSalle, and Section Gang No. 10 - Cote St. Paul, also within the jurisdiction of Roadmaster Leblanc, each consist of one (1) Track Maintenance Foreman and one (1) Leading Track Maintainer.

When the Leading Track Maintainer (Louis Jeffrey), regularly assigned to Section Gang No. 10, was on vacation, Roadmaster Leblanc assigned Grievor C. Masse to work on this section for two (2) weeks, during which period the grievor was compensated at the Track Maintainer's rate of pay.

When the Leading Track Maintainer (L. Bolduc), regularly assigned to Section Gang No. 9, was used to fill a vacancy as Track Maintenance Foreman on Section Gang No. 9, Roadmaster Leblanc assigned Grievor Galvano to work on this section for three (3) weeks, during which period the grievor was compensated at the Track Maintainer's rate of pay.

The Union contends the grievors were occupants of positions of Leading Track Maintainers during the claim period and were entitled to pay therefor at the Leading Maintainers' rate under Section 26.1 of Wage Agreement No. 17.

The Union also contends that the claim should be paid under Section

18 of Wage Agreement No. 17 because the Company did not reply to the General Chairman's letter of appeal dated November 8, 1980, within twenty-eight (28 days, as required by Section 18.8 of Wage Agreement No. 17.

The Company contends that Messrs. C. Masse and A. Galvano were properly classified and compensated as Track Maintainers during the time they were assigned to positions on Sections 10 and 9 respectively.

FOR THE EMPLOYEES

FOR THE COMPANY:

(SGD.) H. J. THIESSEN
SYSTEM FEDERATION GENERAL CHAIRMAN

(SGD.) J. B. CHABOT
GENERAL MANAGER,
OPERATION AND
MAINTENANCE

There appeared on behalf of the Company:

I.J. Waddell	-- Labour Relations Officer, CP Rail, Montreal
B.D. Demers	-- Supervisor, Labour Relations, CP Rail, Montreal
J.H. Blotsky	-- Assistant Supervisor, Labour Relations, CP Rail, Montreal

And on behalf of the Brotherhood:

H.J. Thiessen	-- System Federation General Chairman, BMWE, Ottawa
L.M. DiMassimo	-- General Chairman, BMWE, Montreal

AWARD OF THE ARBITRATOR

The issue is whether or not the grievors were entitled to payment as Leading Track Maintainers during the periods in question. There is no doubt as to the grievor's qualifications. While they regularly worked as Track Maintainers, they were qualified as Leading Track Maintainers.

For the most part, there would appear to be little or no difference between Leading Track Maintainers and Track Maintainers with respect to the actual work regularly performed. It would seem that the actual tasks performed by the grievors during the periods in question could have been appropriately performed by someone in either classification, or indeed in the lower-rated classification of Trackman. Further, it is acknowledged that had the grievors not been qualified as Leading Track Maintainers they might properly have performed the same work, but could not properly have advanced this claim. The issue in this case might be restated as being whether or not the company relied in any way on the grievors' higher qualifications - as potentially, even if not actually necessary - in

assigning them to their positions.

In each case the grievor was appointed to replace someone classified as, and working as a Leading Track Maintainer. He did the same work as a Leading Track Maintainer would have done. The regular complement of each gang consisted of a Track Maintenance Foreman and a Leading Track Maintainer, and it was as vacation substitutes for the latter that the grievors worked.

What distinguishes a Leading Track Maintainer from a Track Maintainer would appear to be, primarily, that the Leading Track Maintainer is qualified to work as a Track Maintenance Foreman. The grievors, then, had that qualification. While the company is not obliged to fill all the positions in its regular complement, and while it may determine the qualifications which it requires for the performance of various tasks, it cannot properly be heard to say that no vacancy exists where an assignment is in fact made, or that qualifications on which it may well have relied, or would appear to have relied, were not necessary.

In the instant case, in making the assignments it did, the company maintained its forces at their regular level, had its work performed by employees with the regularly-required qualifications and, in fact, maintained the potential of filling-in for an absent Track Maintenance Foreman. In fact, by appointing the grievors, the company kept up the status quo ante.

In these circumstances, I think it must be concluded that the grievors were in fact working as Leading Track Maintainers. They were, accordingly, entitled to be paid at that rate.

For the foregoing reasons, the grievance is allowed.

J.F.W. Weatherill
Arbitrator