

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 930

Heard at Montreal, Tuesday, April 13, 1982

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim of the Union that the Company violated Section 13.13, Wage Agreement No. 17, when in Bulletin No. 35, dated June 2, 1981, they awarded the position of permanent Track Maintenance Foreman at Claresholm, Alberta, to M. J. Sawchyn, a Leading Track Maintainer, junior to W. S. Russell who has already established seniority as Track Maintenance Foreman and had applied for this position as required by Bulletin No. 34 which accepted applications until midnight, June 1, 1981. The Union claims the award of permanent Track Maintenance Foreman position, Claresholm, Alberta be awarded to W. S. Russell.

JOINT STATEMENT OF ISSUE:

The Union contends that W. S. Russell forwarded his application to the Company on May 27, 1981, and Bulletin No. 34 did not close until midnight June 1, 1981. The Local Chairman received his copy of this application on May 29, 1981.

The Union further contends that W. S. Russell being senior to M. J. Sawchyn for position of Track Maintenance Foreman, Claresholm, Alberta, be awarded said position.

The Company contends that it did not receive the application from W. S. Russell until June 2, 1981, and therefore, it was not accepted.

FOR THE BROTHERHOOD:

(SGD.) H. J. THIESSEN
System Federation General Chairman

FOR THE COMPANY:

(SGD.) L. A. HILL
General Manager
Operation and
Maintenance

There appeared on behalf of the Company:

I. J. Waddell	- Labour Relations Officer, CP Rail, Montreal
R. F. Shreenan	- Assistant Supervisor, Labour Relations, CP Rail, Vancouver

And on behalf of the Brotherhood:

H. J. Thiessen	- System Federation General Chairman, BMW, Ottawa
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L. DiMassimo - General Chairman, BMW, Montreal
F. L. Stoppler - Vice-President, BMW, Ottawa

AWARD OF THE ARBITRATOR

It would appear to be agreed that had Mr. Russell's application reached the appropriate Company Officer on time, he would have been the successful applicant. There is no doubt as to his qualifications or seniority.

Article 13.13 sets out the order of classifications in the Track Department. That Article was not violated. What is really in issue is the application in this case of Article 14.3, which is as follows:

"Employees desiring bulletined positions will submit written application, which application must reach the designated officer not later than the tenth day after the date of the bulletin. Applicants must forward copy of their application to the Local Chairman. Applicants bidding on more than one position on the same bulletin must state, in order, their preference."

In fact, a period of more than ten days was designated for the submission of applications for the job in question. That increased time did not, however, prejudice the grievor relative to other employees, and the union did not rely on that variance.

The thrust of the union's argument was, in effect, that the grievor mailed his application in ample time for it to be delivered in the normal course. A copy was received in time by the Local Chairman in time, the Joint Statement sets out. The fact is, however, that the application did not reach the designated officer before the expiry of the announced time.

Article 14.3 provides that applications "must reach" the designated officer on time, and in the bulletin the Company advised that applications received after the closing date would not be accepted. These provisions are mandatory, and they are not unreasonable. Their effect is that it is the applicant who must bear any risks associated with the method of communication chosen by him. In the instant case, the grievor has suffered, it would seem, because of an unsatisfactory mail service. The loss thus caused, however, does not fall on the Company or on the successful candidate. The grievor's application simply did not meet the requirements of the Collective Agreement, even although that was through no fault of his.

For the foregoing reasons the grievance must be dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.