CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 956

Heard at Montreal, Tuesday, June 8, 1982

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(EASTERN REGION)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

A claim by the Union that the Company violated Section 13.12, Wage Agreement No. 17, and Section 3.5 of the Machine Operators Supplemental Agreement when Mr. D. C. Fleming was not permitted to occupy a position of Group 1 Machine Operator on the Rail Change Out Machine.

JOINT STATEMENT OF ISSUE:

1. On July 30, 1981, Mr. Fleming was named in Eastern Region Bulletin No. 82 as one of the senior applicants for Group 1 Machine Operator position on the Rail Change Out Machine.

2. On August 15, 1981, Mr. Fleming reported to the Rail Change Out Gang at which time he was not permitted to occupy a position on the Rail Change Out Machine. He was instead assigned as a Group 1 Machine Operator of a Ballast Regulator on that gang.

3. On August 21, 1981, Mr. Fleming was displaced from the Operator position on the Ballast Regulator at which time he requested to displace to a Group 1 Operators position on the Rail Change Out Machine. This request was denied.

4. Mr. Fleming then exercised his seniority to a position of Group 1 Machine Operator on a Surfacing and Lining Gang working at another location, occupying the position commencing August 25, 1981.

The Union contends:

-that in not permitting Mr. Fleming to occupy a position of Group 1 Machine Operator on the Rail Change Out Machine the Company violated Section 13.12 of Wage Agreement No. 17 and Section 3.5 of the Machine Operators Supplemental Agreement;

-that D. C. Fleming be paid for the three days pay he lost when not allowed to displace a junior employee as RCO Operator August 22-24, 1981, inclusive;

-that D. C. Fleming be paid the difference in total compensation including overtime, that he earned as Machine Operator on the S. and L. Gang to that he could have earned as Group 1, RCO Operator.

The Company denies the Union's contentions.

| FOR THE UNION: | FOR THE COMPANY: |
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| (SGD.) H. J. THIESSEN<br>System Federation-General Chairman | (SGD..) D. V. BRAZIER<br>(for) Acting General Manager, Operation & Maintenance |

There appeared on behalf of the Company:

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| I. J. Waddell | - Labour Relations Officer, CP Rail, Montreal |
| L. A. Clarke | - Supervisor, Labour Relations, CP Rail, Toronto |
| K. W. Sutherland | - Superintendent, Maintenance of Way, System, CP Rail, Montreal |

And on behalf of the Brotherhood:

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| H. J. Thiessen | - System Federation General Chairman, BMWE, Ottawa |
| R. Wyrostok | - Federation General Chairman, BMWE, Edmonton |
| E. J. Smith | - General Chairman, BMWE, London |
| R. Lunn | - General Chairman, BMWE, Vancouver |
| F. L. Stoppler | - Vice-President, BMWE, Ottawa |

AWARD OF THE ARBITRATOR

The grievor submitted an application for a position as R.C.0. Unit Operator. Such an operator would, it appears, be classified as a Machine Operator Group 1. The grievor was already a Machine Operator Group 1. It does not follow that he could do any job which might be assigned to employees in that classification, and in particular it does not follow that the grievor was, by viture of being a Machine Operator Group 1, qualified to operate any or all units of the R.C.0. Machine. From the material before me, it is apparent that the grievor was not in fact qualified to operate that machine.

The bulletin on which the Union relies is somewhat ambiguous. It does not state that the grievor had been awarded the job for which he applied, although it appears in other respects to be a job-award bulletin. Specifically, however, it simply states that the grievor was among the senior applicants for the job. In fact, as has been noted, the grievor was not qualified for the machine, which he had never seen before. He was given work (as a Machine Operator Group 1) as a Ballast Regulator Operator, until he was displaced by a senior employee. The grievor was not then allowed to displace a junior employee working on the R.C.0. Machine because, again, the grievor was not qualified.

The articles referred to call for promotion of senior employe or permit them to displace junior employees in certain circumstances provided always that the senior employee seeking to exercise such rights is qualified. The Collective Agreement does not provide that senior employees are entitled to be trained in such cases, nor that the fact that junior employees have been trained is to be ignored.

It simply requires that employees be qualified to perform the jobs they claim. The grievor was not qualified to be a unit operator on the R.C.0. Machine There was, therefore, no violation of the Collective Agreement.

Accordingly, the grievance must be dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.