

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 985

Heard at Montreal, Wednesday, September 15th, 1982

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(EASTERN REGION)

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

A claim by the Union that J. F. Hole and F. Irvine should have been permitted to exercise their seniority to positions of Group II Machine Operators on the RCO Gang after being named in Eastern Region Bulletin No. 82 dated July 30 as two of the senior applicants to such positions.

JOINT STATEMENT OF ISSUE:

The Union contends that J. F. Hole and F. Irvine, having been awarded the Group II positions according to Section 14.12, Wage Agreement 17, should have been allowed to exercise their seniority to work such positions.

The Union further contends that J. F. Hole and F. Irvine be paid the difference in wages from the respective positions they worked, to that of Group II Operator from date they were awarded the Group II positions.

The Company declines payment and denies the Union contention.

FOR THE UNION:

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

FOR THE COMPANY:

(SGD.) L. A. CLARKE
for General Manager,
Operation and Maintenance

There appeared on behalf of the Company:

I. J. Waddell - Labour Relations Officer, CP Rail, Montreal
L. A. Clarke - Supervisor, Labour Relations, CP Rail, Toronto
K. W. Sutherland - Superintendent, M/W - System, CP Rail, Montreal
A. N. Pawson - Supervisor, R.C.O. CP Rail

And on behalf of the Brotherhood:

H. J. Thiessen - System Federation General Chairman, BMW, Ottawa
E. J. Smith - General Chairman, BMW, London

AWARD OF THE ARBITRATOR

Article 14.12, referred to in the Joint Statement of Issue, is as follows:

"14.12 Appointments shall be made by the Officer issuing the bulletin. The name of the appointee and his seniority number will be shown on the next bulletin. The successful applicant will be required to take over the position without undue delay."

That Article is really not material to the instant grievance, where the grievors' claim is not with respect to the notification, but is rather that they did not get the appointment for which they applied. While I was not referred to any specific provision to that effect, it may be thought that in Article 14, which deals with vacancies and new positions, it is implicit that bulletined jobs are to be awarded to the senior qualified applicants entitled to bid. In the instant case, the evidence is clear that the grievors, who had worked in certain Group IV and Group III jobs, simply were not qualified to perform the Group II jobs in question, without training. Nothing in the Collective Agreement requires the Company to provide training for bulletined jobs, and there was no violation of the Collective Agreement in this case.

The thrust of the Union's argument was that the Company had, in the past, assigned unqualified employees to the jobs in question, and had given them the necessary training. The Company has done that in cases where there were in fact no qualified applicants. That it did not do so in this case does not prove that the Company has failed to "treat like cases alike" (whether or not the Collective Agreement requires it to do so). The instant case is simply not like those other cases because here there were in fact qualified applicants, able to do the jobs without training. The grievors were not qualified, and there was no obligation on the Company to train them. Nothing in the Collective Agreement requires that the jobs in question, which involve the operation of expensive equipment for which training is necessary, be assigned simply on the basis of seniority.

There being no violation of the Collective Agreement, the grievances must be dismissed.

J. F. W. WEATHERILL,
ARBITRATOR