

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.1007

Heard at Montreal, Wednesday, November 10th, 1982

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(ATLANTIC REGION)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

The Company trained 9 Trackmen from Saint John Division as Track Maintainers as specified in Section 27, Wage Agreement No. 41. All 9 Trackmen completed the Track Maintainers course successfully. The Company has declined to pay them the qualified Track Maintainers rate of pay.

JOINT STATEMENT OF ISSUE:

The Union contends:

The Company violated Section 26.1(B) and 16.1, Wage Agreement No. 41, when these 9 employees, on completion of the training, were not paid the qualified Track Maintainer rate of pay.

That all 9 employees (Saint John Division) be paid the difference in rate of pay from Trackman to Track Maintainer from the date they successfully completed Track Maintainer training or, pursuant to Section 19. of the Wage Agreement, whichever date came last.

The Company denies the Union's contentions and declines payment of the claims.

FOR THE UNION:

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

FOR THE COMPANY:

(SGD.) J. B. CHABOT
General Manager,
Operation and Maintenance

There appeared on behalf of the Company:

B. A. Demers	- Supervisor, Labour Relations, Atlantic Region, CPR, Montreal
J. H. Blotsky	- Asst. Supervisor, Labour Relations, Atlantic Region, CPR, Montreal
I. J. Waddell	- Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

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

L. DiMassimo - General Chairman, BMW, Montreal
F. L. Stoppler - Vice-President, BMW, Ottawa

AWARD OF THE ARBITRATOR

Article 26.1 of the Collective Agreement sets out the rates of pay for the various classes of employees. The grievors were Trackmen, and their rates, along with the rates of certain related positions, are set out in Article 26.1 (A). The rates for Track Maintainers and certain other classifications are set out in Article 26.1 (B). Article 26.1 (B) includes the following note:

"NOTE: Upon successful completion of the training program specified in Section 27 employees occupying positions in the following classifications shall be entitled to the following rates of pay:"

Track Maintainer is one of the classifications listed. The grievors successfully completed the training program specified in Article 27. They would, therefore, be entitled to the Track Maintainer's rate if they were "occupying positions" in that classification.

The mere fact of being qualified for a higher-rated position does not entitle an employee to that rate. The employee must actually be occupying the position. The Company's contention is that as the grievors continued to work, after their training, in the Trackman "B" positions they had previously held, they were only entitled to the Trackman "B" rate. It is the Union's contention that the grievors should be considered, by virtue of the provisions of the Collective Agreement (and bearing in mind that the actual work involved is the same), as holding Track Maintainer positions.

The grievors would be entitled to the Track Maintainer rate if they were employed in a "special maintenance gang", as Article 16.1 provides. In the instant case, it is neither alleged nor shown that the grievors worked in such a gang.

Article 13.9 of the Collective Agreement is as follows:

"13.9 After a position has been filled by a Trackman "B" for one year, it shall be bulletined as a trackman "A"/track maintainer position unless otherwise agreed between the System Federation General Chairman and the appropriate officer of the Railway."

It is not contended that the grievors had filled positions as Trackmen "B" for one year. It is said, however, that their positions had been filled, by one employee or another, for one year. In my view, the effect of Article 13.9 is to establish a position, requiring to be bulletined, where an employee (a Trackman "B") has filled it for a year. The grievors not having held such positions for a year, Article 13.9 does not apply. If I am wrong in this, however, it does not follow that the grievors hold Track Maintainer positions simply because they are working in positions in which they or someone else have worked for a year: Article 13.9 does not

convert Trackmen B into Track Maintainers, rather, it requires the bulletining of a Track Maintainer's position. The holding of such a position has various implications with respect to seniority rights, quite apart from the fact that the actual work involved may be the same.

Rightly or wrongly there has been no bulletining of Track Maintainer positions to replace or up-grade the Trackman "B" positions held by the grievors. The grievors have not applied for nor been appointed to such positions. The requirement for bulletining is not in issue in this case.

It has not been shown that the grievors are in fact holding positions within the classification of Track Maintainer. Nor, finally, has it been shown that the grievors are "labourers in extra gang engaged practically all year round". If they were, they would be entitled to pay as Track Maintainers, pursuant to Article 26.5.

It has not been shown that the grievors are entitled to the Track Maintainers rate under any applicable provisions of the Collective Agreement, and the grievance must therefore be dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.