

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1106

Heard at Montreal, Wednesday, June 15, 1983

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Atlantic Region)

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

DISPUTE:

Disqualification of Mr. B. Boyer as Production and Methods Control Clerk on August 18, 1982.

JOINT STATEMENT OF ISSUE:

On July 26, 1982 Mr. Boyer notified of his desire to exercise his seniority to displace as Production and Methods Control Clerk and reported to work on August 16, 1982. Mr. Boyer was disqualified from this position on August 18, 1982.

The Union contended that Mr. Boyer can perform the functions necessary to successfully fill the requirements of the above mentioned position and also claimed reimbursement for lost wages.

The Company denied the Union request.

FOR THE BROTHERHOOD:

(SGD.) W. T. SWAIN
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. Blotsky	- Assistant Supervisor Labour Relations, Atlantic Region, CPR, Montreal
J. Serena	- General Car Foreman, CPR, St. Luc Car Department, Montreal
P. E. Timpson	- Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

W. T. Swain	- General Chairman, BRAC, Montreal
P. Vermette	- Vice General Chairman, BRAC, Montreal
J. Marien	- Local Chairman, BRAC, Montreal

AWARD OF THE ARBITRATOR

On July 26, 1982, the grievor was, apparently properly, displaced from his clerical position. He sought to exercise his seniority over a junior employee in a position of Production and Methods Control Clerk, occupying the position on August 16. He was disqualified from the job on August 18, essentially because of the number of errors, including errors of calculation, in his work.

The grievor was entitled to exercise his seniority pursuant to Article 25.2. That Article requires that an employee exercising seniority be "qualified in accordance with Clauses 24.1 and 24.4". Those Articles are as follows:

"24.1 Promotion shall be based on ability, merit and seniority; ability and merit being sufficient, seniority shall prevail. The officer of the Company in charge shall be the judge, subject to appeal, such appeal to be made in writing within fourteen calendar days of the appointment.

24.4 An employee assigned to a position by bulletin will receive a full explanation of the duties of the position and must demonstrate his ability to perform the work within a reasonable period of up to thirty calendar days, the length of time to be dependent upon the character of the work. Failing to demonstrate his ability to do the work within the period allowed, he shall be returned to his former position without loss of seniority, and the position shall be awarded to the next senior qualified employee who has applied."

In the instant case the Company evidently came to a very rapid decision as to the grievor's potential ability to perform the work in question satisfactorily. The grievor had, in the past, relieved on many positions having, in one way or another, some relationship to the work of Production and Methods Control Clerk. These included Production Control Clerk, Statistical Clerk, Office Manager and several other positions. That experience does not guarantee the grievor's ability to perform the particular work of a Production and Methods Control Clerk, but it does indicate a general level of ability, and a knowledge of general procedures which would make him a suitable candidate for the job. He was then entitled to a period of up to thirty days to demonstrate his ability to do the work.

The work involved was described by the Company as follows:

"(B) The Production and Methods Clerk confirms using other documents that employees are properly listed on weekly time sheets and actually worked the hours as reported. This information is checked for accuracy through cross-balancing and ensuring that these numbers match the recapped hours shown on the suamary sheet of the daily schedule. This function is similar to maintaining a balance sheet. This position constructs all reports

(weekly area report and weekly management report)
extracting the information from the cross-balanced
totals on the weekly time sheets."

The work was shown to the grievor and he was given certain weekly time sheets to work on. He was not given close supervision. The weekly time sheets are only one aspect of the job, although they would appear to be a major one. When his work was checked, it was found that he had made many errors in cross-checking, that the sheets did not balance, and that there were errors of calculation.

The particular tasks were, it seems, new to the grievor. The job is a complex one and it is perhaps not surprising that mistakes were made. Given their number, it is also perhaps not surprising that the Company did not consider the grievor very promising in the job. He was not, however, given an opportunity to learn from his mistakes. It may be, although I make no finding as to this, that the explanation of the job which he was given was not as "full" as Article 24.4 contemplates. As to the grievor's errors in calculation, it may be noted that following the administration of a machine calculation test on July 30, the Employment Supervisor advised that the grievor was "acceptable to be a Clerk that utilizes a calculation machine". He went on to say that in the area of multiplication, the grievor "should be given close supervision for approximately one month".

In my view, the grievor was not given the chance to which he was entitled under Article 24.4. While his first attempts were unsatisfactory, it was not, I think, so apparent that he could never perform the job satisfactorily as to justify the abrupt termination of the qualifying period. I agree there may be cases where such termination is justified, but the instant case has not been shown to be one of them. The work involved follows a regular pattern, and there is no reason to conclude that with increased familiarity, the grievor would not perform more effectively. The judgment on that matter, subject to appeal, is for the Company to make under Article 24.1. In the instant case I consider that the Company did not have sufficient experience of the grievor's work to be able to determine the issue properly. No doubt the Company required prompt and accurate reporting. Its obligation under the Collective Agreement, however, is to grant a certain time to employees in new positions so they may effectively meet the standards required.

For the foregoing reasons, the grievance is allowed to the extent that it is my award that the grievor be permitted a period of time to demonstrate his ability to perform the work, in accordance with Article 24.4. Monetary compensation for loss of earnings will be payable in the event the grievor does demonstrate such ability.

J. F. W. WEATHERILL,
ARBITRATOR.