

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1128

Heard at Montreal, Wednesday, July 6, 1983

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)  
(Eastern Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

A claim by the Union that Bridgeman M. Couture should have been allowed to displace a junior Bridgeman at London, Ontario.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. The B&B Gang working under Foreman M. Devine was terminated effective September 27, 1982. Bridgeman M. Couture was not allowed to exercise his seniority and displace junior Bridgemen working at London, Ontario, the home terminal.
2. The Company violated Section 15.2 and 15.3, Wage Agreement 41, in refusing to allow Bridgeman M. Couture to displace junior Bridgemen working in London Terminal.
3. The Company violated Section 14.1 and 14.2, Wage Agreement 41, when Bridgemen positions worked at the London Terminal by Bridgemen R. R. Sharpe and D. C. Cole were not bulletined for this location.
4. Mr. M. Couture be paid all expenses incurred for meals and transportation, from September 27, 1982, until allowed to displace junior Bridgemen working at London, Ontario.

The Company declines payment and denies the Union's contention.

FOR THE BROTHERHOOD:

FOR THE COMPANY:

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

(SGD.) P. A. PENDER  
FOR: General Manager  
Operation & Maintenance

There appeared on behalf of the Company:

P. A. Pender - Supervisor Labour Relations, CPR, Toronto  
R. A. Colquhoun - Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

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

#### AWARD OF THE ARBITRATOR

The grievor's position was one awarded on December 15, 1978. It would appear that the bulletin on which he applied (December 1, 1978; not in evidence), did not comply with the requirements of the Collective Agreement. However that may be, the grievor thereafter worked on different gangs and at various locations on an "as/when/where required" basis. He continued to work at the material times, being assigned - for the duration of a particular foreman's vacation - to a different group than that on which he had been working for the previous three months. There had been many similar changes in assignment since the grievor had been appointed in 1978. In these circumstances, it cannot properly be said that the grievor's position was abolished, and that the occasion arose for him to exercise seniority and displace a junior employee.

Articles 14.1 and 14.2 refer to the requirement for and the contents of job bulletins. While, as I have indicated, the bulletin on which the grievor bid in 1978 may have been inadequate, it is too late to raise that issue now, in respect of an assignment made pursuant to that bulletin in 1982, not significantly different from others made in the intervening years.

As to Articles 15.2 and 15.3, they deal with cases of reduction in staff. There was no question of that in this case, or of the grievor's being in any risk of not having work.

There was no violation of the Articles referred to in the instant case (that is, in the assignment given the grievor for the weeks in question here), and the grievance is accordingly dismissed.

(SGD.) J. F. W. WEATHERILL

ARBITRATOR.