

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1145

Heard at Montreal, Wednesday, November 2, 1983

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

AND

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

DISPUTE:

Claim for overtime filed on behalf of Mrs. D. Gasparetti for December 2 and 3, 1982 as Quality Control Clerk.

JOINT STATEMENT OF ISSUE:

On December 2 and 3, 1982 a vacancy existed in the classification of Quality Control and it was necessary to fill the vacancy. An employee junior to Mrs. Gasparetti was called at time and one half to fill the vacancy.

The Union contended that Mrs. D. Gasparetti is senior and qualified to do the job and should have been called for time and one-half for December 2 and 3, 1982.

The Company denied the Union request.

FOR THE BROTHERHOOD:

(SGD.) W. T. SWAIN
General Chairman

FOR THE COMPANY:

(SGD) G. C. McDONALD
Assistant General Manager
Operations

There appeared on behalf of the Company:

L. V. Henry - Terminal Manager, Intermodal Services, Toronto
P. E. Timpson - Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

J. Manchip - General Chairman, BRAC, Montreal
G. B. Gonzales - Local Chairman, BRAC, Toronto
P. Vermette - Vice-General Chairman, BRAC, Montreal

AWARD OF THE ARBITRATOR

On December 2 and 3, 1982, it was necessary on account of the incumbent's illness to fill a vacancy in the classification of Quality Control Clerk by having an employee perform the work on an overtime basis. The Company assigned the work to Mr. M. Piedade, a less senior employee, than the grievor, Mrs. D. Gasparetti. The Company indicated that the grievor, albeit the more senior employee, was not qualified to assume the duties of the position for the brief period that would have been required. The relevant provision of the

Collective Agreement reads as follows:

"9.10 (b)

Work which is required to be performed at overtime rates and which is brought about by an employee being absent and the company requiring a replacement shall first be assigned to the senior qualified employee in that job classification in such office, shed or work location, where such overtime is required who has signified a desire to work overtime pursuant to paragraph (3) of this clause (b); however, if overtime work remains to be assigned, the junior available qualified employee in that job classification in such office, shed or work location will be required to work the overtime."

Since the date the grievor commenced employment she has worked the positions of Key Punch Operator, Code and Edit Clerk, Tracing Clerk, Stenographer and Quality Control Clerk. She presently holds the position of "Outstanding Clerk". Mrs. Gasparetti occupied the position of Quality Control Clerk for a period of six months after she had won a competition in 1980. It is common ground that the job description and qualifications required for the Quality Control Clerk's position have not been changed during the period since Mrs. Gasparetti ceased to occupy the Quality Control Clerk's position.

The Company denied the grievor the overtime work principally because of the "significant changes" that had occurred in the requirements of the position since she had last performed Quality Control Clerk's duties. These changes allegedly disqualified the grievor from consideration for the assignment particularly in a situation, such as the present, where the services required were unplanned and for a relatively short period. It was pointed out that had the grievor updated her qualifications as she was entitled to do pursuant to Article 24.8 of the Collective Agreement (thereby enabling her to accommodate herself to "the significant changes") then the employer suggested it would have encountered no difficulty in making the assignment to the grievor. The employer noted the following in its reply to the grievance:

"The changes in the position were significant to the extent that a new person on the job or one who has not kept up to date would require a few nights training before they could properly perform the duties without delaying the operation."

The employer's brief contained several references to the changes that had transpired since the grievor last performed the duties of the position. The most significant changes, as was pointed out at the hearing, were the changes foisted upon the Company by the regulations introduced by the Canadian Transportation Commission arising out of the recent Mississauga train disaster. Accordingly it was suggested that the Company, had Mrs. Gasparetti been given the job, would have been compelled to have placed a second qualified employee in the vacancy in order to train her.

On the other hand, it was pointed out by the Company that Mr. Piedade

was immediately qualified because he had remained in contact, after he ceased to occupy the Quality Control Clerk's position, with the duties of the position and periodically had performed relief work on the position.

Article 9.10(b) of the Collective Agreement requires an employee who wishes to be considered eligible for replacing vacant positions on an overtime basis to signify in writing their availability. The list shows the employee's name, seniority, position and classification level. At all material times, the grievor's name appeared on that list indicating her readiness for assignment to a vacancy at the overtime rate occasioned by unplanned exigencies at the workplace.

Up until the circumstances that gave rise to these proceedings, Mrs. Gasparetti had been treated by the employer as "qualified" for the Quality Control Clerk's position. For a six month period she performed the functions of the position to the employer's satisfaction. Indeed, the employer acknowledged that, but for a gap in her knowledge with respect to the changes that have been made since she had last performed the functions of the position, the grievor would still have been viewed as "qualified". And, as the employer also admitted in its reply! "a few nights training" would have been required to enable the grievor to perform the duties without delaying operations.

In having regard to the Company's own admissions I cannot discern how it can accurately be said that the grievor is not "qualified" to perform the functions of the Quality Control Clerk's job. In a presumptive sense Mrs. Gasparetti has demonstrated from her past experience her ability and suitability for the position. What the grievor lacks in knowledge, owing to her unfamiliarity with the changes that have occurred since she last performed the Quality Control Clerk's duties, she can learn after "a few nights" on the job. I do not consider that learning requirement as a "training" period as the employer has chosen to characterize it. Any employee who elects to exercise his or her seniority benefits under the Collective Agreement and who, as in the grievor's case, exhibits the qualifications for the position is entitled to a "familiarization" period to accommodate herself to the position. This would be the entitlement of any senior "qualified" applicant for a position under Article 9.10(b) of the Collective Agreement.

The employer obviously selected Mr. Piedade for the position because, amongst other things, he was given opportunities in the past "to periodically relieve on the position". I am satisfied that had the same opportunities been given to Mrs. Gasparetti, the more senior employee, she would have overcome whatever reservations the employer exhibited with respect to her suitability. Indeed, I am satisfied that the employer (as it admitted in its brief it could not do) selected Mr. Piedade for the vacancy because it considered him, in light of his experience, to be more qualified than the grievor. That is not to say, however, that the employer has correctly concluded that Mrs. Gasparetti was unqualified for the position.

The business efficacy of being compelled to assign "qualified" employees to fill unplanned vacancies of a short duration, where a period of familiarization may be required, has not been ignored in

reaching this conclusion. It seems obvious that if the employer wishes to avoid, in future, the risk of being placed in the conundrum it has found itself in this case, it must keep its employees advised of the changes to the positions for which they are "qualified" to exercise seniority privileges under the Collective Agreement. Failure of an employee to exercise the benefits of the Collective Agreement to upgrade their qualifications to accord with changing circumstances will then be at the employees' peril with respect to the exercise of their seniority privileges. In the particular circumstances of this case however the requirements of the Quality Control Clerks's position had not so substantially changed so as to warrant the conclusion that the grievor ceased to be "the senior qualified employee".

For the foregoing reason the grievance succeeds. Mrs. Gasparetti shall be awarded compensation for her missed opportunity to work overtime on December 2 and 3, 1982. I shall remain seized in the event of difficulty in the implementation of this award.

DAVID H. KATES,
ARBITRATOR.