

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1149

Heard at Montreal, Wednesday, November 16, 1983

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Eastern Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

In Bulletin No. 239 dated October 29, 1982, Mr. P. Huneault was awarded the position of operator on the locomotive crane and pile driver. Mr. G. Quesnel being senior as both a Group 1 and Special Group 1 operator, protested the award account having applied for this position.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. Mr. G. Quesnel, a Special Group 1 Operator and Group 1 Operator, being senior, should have been awarded the position of Crane Operator. Section 2.3 and 2.5 of the Memorandum covering Machine Operators.
2. Mr. Quesnel be awarded the position as of October 29, 1982, and be compensated for any loss in total compensation from that date onward.

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

FOR THE BROTHERHOOD:

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

FOR THE COMPANY:

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

There appeared on behalf of the Company:

- | | |
|-----------------|--|
| R. A. Colquhoun | - Labour Relations Officer, CPR, Montreal |
| P. A. Pender | - Supervisor, Labour Relations, CPR, Toronto |
| A. Matte | - Manager of Maintenance of Way Equipment,
CPR, Toronto |
| D. Huard | - Asst. Supervisor, Maintenance of Way Shop,
CPR, Toronto |

And on behalf of the Brotherhood:

- | | |
|----------------|--|
| H. J. Thiessen | - System Federation General Chairman, BMW, E |
|----------------|--|

Ottawa
L. M. DiMassimo - Federation General Chairman, BMW, Montreal
E. J. Smith - General Chairman, BMW, London
R. Y. Gaudreau - Vice-President, BMW, Ottawa

AWARD OF THE ARBITRATOR

The grievor, Mr. Quesnel, was senior in service to Mr. P. Huneault who was awarded the position of Operator on the Locomotive Crane and Pile Driver by virtue of Bulletin No. 239. The grievor alleges, as the more senior candidate, he should have been awarded the position. The employer alleges that the grievor was not "qualified" for the position.

Both the grievor and Mr. Huneault occupy the same Group I classification with respect to the operation of the Company's equipment. At all material times the grievor operated a Torsion Beam Tamper equipped with automatic jacking, levelling and lining devices. The grievor was thereby given his Special Group Seniority by virtue of the skills he exhibited in operating that equipment. In a like fashion Mr. Huneault obtained his Special Group Seniority because he operated a Locomotive Crane of 30-ton capacity. There is no dispute that Mr. Huneault, because of his past experience, is more qualified than the grievor in the operation of the Locomotive Crane and Pile Driver. The trade union does not thereby concede that the grievor is still the senior "qualified" applicant. The relevant provision of the supplemental agreement reads as follows:

"2.3 The order of preference in filling bulletined positions within the Machine Operators' classifications shall be as follows:

1. Group 1 Machine Operators
2. Group 2 Machine Operators
3. Assistant Operators
4. Group 3 Machine Operators
5. Operators' Helpers, Group 4 Machine Operators covered by Clause 4.2."

It is common ground that all candidates for positions pursuant to Article 2.3 of the Supplemental Agreement must, irrespective of seniority, be qualified for the position. In this regard both Article 2.4 and 2.5 of the Collective Agreement reads as follows:

"2.4 If qualified employees are not available in the Machine Operators' group, other Maintenance of Way employees from within the seniority territory, qualified to perform the work, will be given preference in filling vacancies or new positions before new men are hired. In the application of this Clause 2.4, successful applicants will be selected in the order of their first day of entry into the Maintenance of Way service.

2.5 In the event that within three months of

exercising seniority to a position governed by this Agreement an employee is found to be unsuitable, such employee may be returned to his former employment. An employee who wishes to return to his former employment may do so provided he expresses his desire to do so in writing within twelve months following the date of his appointment to a position covered by this Agreement."

The grievor during the course of his career has operated, in addition to the Torsion Beam Tamper, the Electromatic Tamper! a Ballast Regulator, a Joint Peaker Tamper, a Track Liner and Junror Tamper. The Company acknowledges his skills as a machine operator but maintains that he does not possess sufficient skills and experience to qualify for the Locomotive Crane and Pile Driver position.

The trade union maintains that the grievor, albeit he requires a period of familiarization to acquaint himself with the duties of the position, is qualified. In this regard, the Company noted in its brief that approximately four weeks would be necessary for an "unqualified" machine operator to master the position. The trade union relied upon Article 2.5 of the Collective Agreement to suggest that the grievor should have been allowed three months at the job in order to determine his "suitability" for the position.

In having regard to the representations of the employer I am satisfied, as the cases have found, that Article 2.5 was not intended to be used as a "training" period in order to enable a potential candidate for a promotion to learn the intricacies of the position. An applicant for a position, such as the grievor, must exhibit the skills and qualifications to discharge the duties of the position at the time he responds to the bulletin. But does this end the dispute?

I am also satisfied that the grievor in the light of the position he presently occupies as a machine operator with "special group seniority" and the past experience he has had with the Company in the operation of numerous machines of varying complexity that Mr. Quesnel does possess the necessary qualifications to justify being awarded the position. I agree with the trade union that any employee holding the necessary qualifications upon the exercise of his seniority rights requires a period of familiarization to accommodate himself to the new position. In this regard the period of familiarization necessary to adjust to the changes in the operation of the Locomotive Crane and Pile Driver should not take longer than the four week period that the employer indicated would suffice.

Moreover, I am of the view that Article 2.5 of the Collective Agreement allows the employer the protection it might need in the event, after a three month period, the grievor "is found to be unsuitable" for any of the alleged reasons that were discussed in its brief. In short the grievor, in having regard to his qualifications, must be given, as the Collective Agreement contemplates, a sufficient opportunity to prove himself.

For all the foregoing reasons the grievance succeeds. The grievor is to be awarded the position and any compensation as a result thereof.

DAVID H. KATES ,
ARBITRATOR .