CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1183

Heard at Montreal, Tuesday, February 14, 1984

Concerning

CANPAR
(DIVISION OF CANADIAN PACIFIC EXPRESS & TRANSPORT LTD.)

and

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

DISPUTE:

The disqualification of employee R. Crea of bulletined position rated as Dockman.

JOINT STATEMENT OF ISSUE:

Employee R. Crea position of dockman was abolished in the early part of December, 1982. He then bid on another dockman's position and was disqualified from that position and has since been on a lay-off position. The Brotherhood maintained employee was a dockman for a number of years and therefore did not have to requalify and requested he be called back to the position of Dockman and reimbursed all monies lost while held out.

The Company denied the Brotherhood's request.

| FOR THE BROTHERHOOD: | FOR THE COMPANY: |
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| (SGD.) J. J. BOYCE<br>General Chairman, System Board of Adjustment No. 517 | (SGD.) B. D. NEILL<br>Director, Human Resources |

There appeared on behalf of the Company:

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| B. D. Neill | - Director, Human Resources, CP Trucks, Toronto |
| J. W. McColgan | - Labour Relations Officer, CP Rail, Montreal |

And on behalf of the Brotherhood:

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| J. J. Boyce | - General Chairman, BRAC, Toronto |
| J. Crabb | - General Secretary-Treasurer, BRAC, Toronto |
| M. Gauthier | - Vice-General Chairman, BRAC, Toronto |

AWARD OF THE ARBITRATOR

The issue in this case may be expressed in the following terms:

Is an employee who holds and is qualified for a position in one classification and is awarded a like position upon being bulletined

in the same classification subject to the probationary period of thirty calendar days under Article 5.1.2 of the collective agreement?

The relevant provisions of the collective agreement reads as follows:

> "5.1 Promotion and Assignment
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> 5.1.1 The promotion and assignment of employees will be governed by seniority and ability, senior qualified applicant to be given preference. The officer of the Company in charge shall be the judge, subject to appeal which must be made in writing within 14 calendar days of the appointment.
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> 5.1.2 An employee who is assigned to a position by bulletin will receive a full explanation of the duties and reasonable assistance and must demonstrate the ability to perform the work within a reasonable probationary period of up to 30 calendar days, the length of time to be dependent upon the character of the work. Failing to demonstrate the ability to do the work within the probationary period allowed, employee shall be returned to former position without loss of seniority."

In this case the grievor's position as dockman on the afternoon shift was abolished. He performed basically "unloading" duties on that shift. A new bulletined position of dockman was advertised on the midnight shift. A major component of the advertised position was "preloading" trucks with parcels. The grievor responded to the position and was awarded the job pursuant to Article 5.1.1 of the collective agreement.

During the course of his probationary period the uncontradictory evidence demonstrated that the grievor simply could not master the "preloading" procedures required of the position. Despite the assistance given him by his supervisor the employer was obliged to request the trade union representative for an extension of the probationary period. That request was rejected. As a result the employer laid the grievor off the dockman's position on the midnight shift. He then exercised "bumping" privileges to displace a more junior employee who occupied a dockman's position on a more truncated shift in the afternoon.

Article 5.1.2 applies to all bulletined positions that represent a promotion or an assignment under Article 5.1.1. Once the senior qualified employee is awarded that position he must subject himself to the thirty day probationary period as required by Article 5.1.2. The collective agreement does not make the distinction urged upon me by the trade union. That is to say, merely because an employee has established his qualifications to assume a position in one classification it does not follow that he is exempted from the probationary period upon establishing his qualifications for a like position in the same classification that has been bulletined. Indeed, this is the case even though it may represent for pay purposes a lateral transfer. The collective agreement speaks in

terms of "promotions" and "assignments". And once the grievor is awarded a position that represents a lateral assignment he must satisfy, despite his qualifications, the exigencies of the probationary period.

In this particular case, albeit the grievor had established his credentials as a dockman on the afternoon shift, he could not discharge a very essential function required of him upon occupying the dockman's position on the midnight shift. The evidence of the grievor's inability to perform the "preload" function was both persuasive and uncontradicted. In this regard, it may very well be that two positions may be designated with the same title and attract the same wage for the work performed but still entail the discharge of different duties. For that reason, as demonstrated in this case, an employee who accepts a lateral assignment that has been bulletined must satisfy the requirements of the probationary period.

In the grievor's situation he was determined by the employer to be prima facie qualified for the dockman's position on the midnight shift and owing to his seniority was awarded the position. Because the grievor could not demonstrate he could discharge an essential function of the position during the thirty day probationary period he was rightly disqualified from continuing to occupy that position.

The grievance is accordingly denied.

DAVID H. KATES,
ARBITRATOR.