

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1419

Heard at Montreal, Wednesday, October 9, 1985
Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Prairie Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. D. M. Ives applied for the position of Ballast Regulator Operator. On Bulletin DD-46 dated May 30, 1984, the position was awarded to Mr. J. E. Hickey, a junior employee.

JOINT STATEMENT OF ISSUE:

The Union contends that

1. Mr. D. M. Ives possessed the necessary qualifications and should have been awarded the position.
2. The Company violated Section 2.3 and 2.4, of the Machine Operators Memorandum by appointing Mr. J. E. Hickey.
3. Mr. D. M. Ives be awarded the position, a seniority date of May 30, 1984, for Group 1 and any loss of pay he suffered account not being awarded the position in Bulletin DD-46.

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

FOR THE BROTHERHOOD:

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

FOR THE COMPANY:

(SGD.) J. D. CHAMPION
FOR: General Manager
Operation and
Maintenance

There appeared on behalf of the Company:

J. D. Champion - Supervisor, Labour Relations, CPR, Winnipeg
R. E. Noseworthy - Asst. Supervisor, Labour Relations, CPR,
Winnipeg
R. A. Colquhoun - Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen - System Federation General Chairman, BMWE,
Ottawa
R. Y. Gaudreau - Vice-President, BMWE, Ottawa

M. L. DiMassimo - Federation General Chairman, BMW, Montreal
M. L. McInnes - General Chairman, BMW, Winnipeg

AWARD OF THE ARBITRATOR

The relevant provisions of the collective agreement relating to awarding bulletined positions are set out under Articles 2.3 and 2.4 of the collective agreement:

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

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

"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."

The company awarded the position of Group 1 Machine Operator to work "the Ballast Regulator" on the Steel Undercutter Gang to Mr. J. E. Hickey. It is common ground that the grievor, Mr. D. M. Ives, was the more senior employee who occupied the Grade 2 Machine Operator position at the time the job bulletin was posted. Mr. Hickey was not entitled to preferential treatment under Article 2.3 because he had not occupied any of the Machine Operator's Classifications at the time the bulletin was posted. Nonetheless because he had acquired approximately 30 months experience on the Ballast Regulator the company determined that he was the successful candidate.

The sole issue before me is whether the grievor at the time of the posting was qualified to work the Ballast Regulator. And the trade union submitted that the grievor's holding a position in the Group 2 Machine Operator's classification should have sufficed to warrant the inference that he was qualified. And if qualified, the grievor was entitled to a short familiarization period to accommodate himself to the new position of operating the Ballast Regulator.

The company demonstrated after an intensive review of the grievor's experience as a Group 2 Machine Operator that none of the positions he occupied were akin to the functions relevant to operating a Ballast Regulator. These duties pertained to Extra Gang Labourer, Timekeeper, Machine Operator, Truck Driver and Helper's positions. Unlike the situation in CROA Case #1149, the company argued that the

trade union had not demonstrated the grievor's qualifications by linking the duties he has hitherto performed with the experience required for the Ballast Regulator's position.

In dealing with this case I must express my reservations about the requirement imposed by the company that an applicant would have to have "on the job" experience in order to qualify for a bulletined position. I am clearly of the view that an applicant without "on the job experience" could qualify for a bulletined position provided his credentials and work experience pertained to the job in question. Indeed, the requirement of actual experience in performing the bulletined job would immediately disqualify most candidates for a position and would render meaningless the seniority provisions of the collective agreement.

Notwithstanding these reservations, the trade union simply cannot rely on the fact that the grievor has occupied a Group 2 Machine Operator position in order to successfully maintain he is qualified to operate a machine that is the subject matter of a Group 1 Classification. Article 2.3 is only intended to give such employees a "preference" in competing for a bulletined job over other employees below their rank. It still must be demonstrated by the trade union that a candidate in the Group 2 Classification is "qualified". The grievor's preferred status raises no automatic entitlement to the position. None of the duties performed by the grievor at the time the bulletined position was posted, despite his preferential status, was demonstrated to be akin or related to the experience necessary to perform duties on the Ballast Regulator. In other words I am compelled on the basis of the material before me to conclude that the grievor would require a substantial training period (as opposed to a familiarization period) in order to qualify for the position.

Since I am not satisfied the grievor was "qualified" the company was free to appoint another qualified candidate to the position. The grievance is accordingly denied.

DAVID H. KATES,
ARBITRATOR.