

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1632

Heard at Montreal, Tuesday, April 14, 1987

Concerning

CANADIAN PACIFIC LIMITED (PACIFIC REGION)

And

RCTC RAIL CANADA TRAFFIC CONTROLLERS

DISPUTE:

Refusal to accept Mr. R. T. Salonen's application for the Dispatcher Trainee Program.

JOINT STATEMENT OF ISSUE:

On November 23, 1984, Mr. Salonen responded to Bulletin No. 37 and submitted an application for acceptance into the Dispatcher Trainee Program. Bulletin No. 37, which was issued pursuant to Articles 8.02 and 6.01 of the Collective Agreement, advertised for Dispatcher Trainees. This Bulletin was issued to all Operators on the British Columbia Seniority District.

On December 28, 1984, Mr. Salonen was issued a letter from the Chief Train Dispatcher stating that his application for acceptance into the Dispatcher Trainee Program had been rejected.

The Union contends that Mr. Salonen's application into the Dispatcher Trainee Program was improperly rejected and in violation of the Collective Agreement.

The Company contends that Mr. Salonen's application was properly handled.

FOR THE COMPANY:

FOR THE UNION

(SGD.) J. M. WHITE
FOR: General Manager
Operation & Maintenance
CP Rail - West (Van.)

(SGD.) D. H. ARNOLD
System General Chairman
RCTC - CP Division
Winnipeg

There appeared on behalf of the Company:

F.R. Shreenan - Supervisor, Labour Relations, Vancouver
J.W. McColgan - Labour Relations Officer, Montreal

And on behalf of the Union:

D.H. Arnold - System General Chairman, Winnipeg
P. Taves - System General Chairman, Winnipeg
R. Leclerc - System General Vice Chairman, Montreal

AWARD OF THE ARBITRATOR

The grievor's right to promotion was governed by the terms of Article 5.01 of the Collective Agreement which provides as follows:

5.01 The right of promotion and seniority of Telegraphers will extend over each seniority district and will be governed by merit, fitness and ability. Where these are sufficient, the senior Telegrapher will be given preference.

The foregoing provision plainly contemplates that when an employee demonstrates the requisite qualifications, having regard to his or her merit, fitness and ability, the employee is to be given the promotion assuming that he or she has the requisite seniority standing. In this case there is no issue as to the technical qualifications of the grievor to perform the duties and responsibilities of a Dispatcher Trainee, his having worked some seven years previously in the classification of Dispatcher. Of greater concern to the Company, however, was the merit and fitness of Mr. Salonen at the time of the job posting, with particular reference to his prior disciplinary record.

On a careful review of the material, the Arbitrator cannot characterize the Company's concern as groundless. In the four years immediately prior to the date of the job posting, the grievor was the subject of a number of disciplinary offences. At the time of the job posting, Mr. Salonen's record stood at 40 demerits. Only shortly before the posting he was disciplined for an anonymous telephone call, made on September 1, 1984. The call, conceived by the grievor as a prank, consisted of an anonymous death threat to a fellow employee working as a Train Dispatcher. The threat was taken seriously by the Dispatcher, and a subsequent investigation revealed the grievor's responsibility. After the imposition of discipline, the Company maintained serious reservations about the degree of judgement and responsibility exhibited by the grievor and concluded that his actions did not exhibit the qualities required of a person to be entrusted with the duties and authority of a Train Dispatcher.

In the Arbitrator's view the Company had reasonable grounds for that conclusion. An anonymous death threat is a serious matter and reflects profoundly on the maturity and trustworthiness of an individual. The grievor's action may have been an uncharacteristic error of judgement without malicious intention. It may, with the passage of time and a sustained good record have a diminished bearing on his assessment for a future promotion. However, that serious event and his disciplinary record as a whole were a legitimate consideration in the Company's decision to deny him the opportunity of promotion at the time in question. For these reasons, the grievance must be dismissed.

MICHEL G. PICHER
ARBITRATOR