

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2132

Heard at Montreal, Tuesday, 9 April 1991

concerning

CANADIAN PACIFIC LIMITED

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

The Company not allowing Mr. P. Golden to displace to the position of Maintenance Clerk in the Winnipeg Superintendent's Office as per the Memorandum of Agreement on Consolidation of Seniority Rosters, Appendix E of the Job Security Agreement.

UNION'S STATEMENT OF ISSUE:

On November 14, 1989 the Company advised Mr. P. Golden that he was being disallowed to exercise his seniority to the position of Maintenance Clerk in the Superintendent's Office in Winnipeg.

The Company advised Mr. P. Golden that his present qualifications were deemed insufficient to enable him to exercise his seniority to the position of Maintenance Clerk.

The Union contended that Mr. P. Golden should have been given the opportunity to demonstrate his ability as he had previously worked positions that required a high level of both responsibility and ability.

The grievance was processed through Step 1, Step 2 and Step 3. The Company declined the request of the Union that Mr. Golden be given an opportunity on the position as contemplated in Article 24.1 and 24.4 with compensation for any loss of wages.

FOR THE UNION:

(SGD.) D. DEVEAU  
SYSTEM GENERAL CHAIRMAN

There appeared on behalf of the Company:

K. E. Webb	Labour Relations Officer, Vancouver
M. E. Keiran	Assistant Unit Manager, Labour Relations, Vancouver
D. David	Labour Relations Officer, Montreal
R. A. Hamilton	Personnel Manager, Finance & Accounting, Montreal

And on behalf of the Union:

D. Deveau                      System General Chairman, Calgary  
C. Pinard                      Vice-General Chairman, Montreal

#### AWARD OF THE ARBITRATOR

The material discloses that the grievor has been employed in the Company's service for some ten years, having served in a number of clerical ranks at Winnipeg. In November of 1989 he was displaced from his position as Mechanical Timekeeper by the operation of the seniority provisions of his collective agreement. Thereafter he sought to displace into a number of positions, including that of Maintenance Clerk in the Winnipeg Superintendent's Office. When the Company took the position that the grievor was not qualified for that position this grievance ensued.

The position of Maintenance Clerk was created in September of 1987. It is not disputed that the position requires familiarity with the Purchasing Inventory Payables System (PIPS), the Expenditure Control System (ECS) as well as the handling of invoices and knowledge of the Vehicle Inventory System. The material before the Arbitrator establishes that the grievor had no practical prior experience with the Purchasing Inventory Payables System, and had little or no knowledge of the Expenditure Control System, the handling of invoices and the Vehicle Inventory System.

Articles 24.1 and 24.4 of the Collective Agreement provide as follows:

- 24.1 Promotion shall be based on ability, merit and seniority; ability and merit being sufficient, seniority shall prevail. The officer of the Company in charge shall be the judge, subject to appeal, such appeal to be made in writing within fourteen calendar days of the appointment.
- 24.4 An employee assigned to a position by bulletin will receive a full explanation of the duties of the position and must demonstrate his ability to perform the work within a reasonable period of up to thirty calendar days, the length of time to be dependent upon the character of the work. Failing to demonstrate his ability to do the work within the period allowed, he shall be returned to his former position without loss of seniority, and the position shall be awarded to the next senior qualified employee who has applied.

The Union in the instant case seeks to obtain for the grievor an opportunity to demonstrate his ability as contemplated in Article 24.4. However, it must first establish that Mr. Golden was sufficiently qualified to be assigned to the position in question, as required by Article 24.1 of the Collective Agreement. He can only claim the position if he has the ability and merit to do so. While the record reveals that for certain periods of time Mr. Golden did previously work in positions of some responsibility such as Chief Clerk, Timekeeper, Train Clerk and Interchange Clerk, those tasks did not require the same knowledge and skills which are prerequisites for the Maintenance Clerk's position. That job is heavily accounting

oriented, and it is acknowledged that Mr. Golden has no previous accounting experience.

Language similar to that found in Article 24.1 of the instant Collective Agreement has been thoroughly considered in prior awards of this Office (see, e.g., CROA 215, 258, 321 and 1003). As the cases have repeatedly established, an employee who does not possess the qualifications to immediately assume the duties and responsibilities of a position, in the sense that they do not have the necessary qualifications, is not, by the operation of a provision such as Article 24.4, entitled to a trial period or training period on the job in question. There may be circumstances where it appears that someone could have the ability to perform a job, in consequence of which they are awarded a bulletin under Article 24.1, and their ability to perform in the work is assessed over the trial period contemplated in 24.4. That, however, is not the circumstance with respect to the instant case. In the Arbitrator's view, given Mr. Golden's inexperience in the systems and functions of the Maintenance Clerk's position, he could not claim the requisite level of ability and qualification to merit assignment and the opportunity for a trial period contemplated in Article 24.4. No violation of that provision is disclosed.

For the foregoing reasons the grievance must be dismissed.

April 12, 1991

(Sgd.) MICHEL G. PICHER  
ARBITRATOR