

CANADIAN RAILWAY OFFICE OF ARBITRATION  
CASE NO. 2258  
Heard at Montreal, Tuesday, 9 June 1992  
concerning  
ONTARIO NORTHLAND RAILWAY

and  
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
DISPUTE:

The Company awarded the position of Carpenter in the B&B Department which was advertised on Bulletin #5 dated April 11, 1990 to the junior Bridgeman, G. Megginson, over the senior Bridgeman, R.M. Paulin.

JOINT STATEMENT OF ISSUE:

It is the contention of the Brotherhood that as Mr. R.M. Paulin is the senior Bridgeman and Mr. G. Megginson is the junior Bridgeman, the Company violated Articles 13.9 and 14.10 of Agreement 7.1 by awarding the Carpenter's position advertised on B&B Bulletin #5 dated April 11, 1990 to Mr. Megginson rather than to the senior qualified Bridgeman, Mr. R.M. Paulin.

The Company contends that no violation of the Collective Agreement occurred.

FOR THE BROTHERHOOD:

FOR THE COMPANY:

(SGD.) G. SCHNEIDER

(SGD.) P. A. DYMENT

SYSTEM FEDERATION GENERAL CHAIRMAN

PRESIDENT

There appeared on behalf of the Company:

M. J. Restoule

Manager, Labour Relations, North Bay

G. A. Payne

Chief Engineer, Rail Services, North Bay

And on behalf of the Brotherhood:

G. Schneider

System Federation General Chairman, Winnipeg

#### AWARD OF THE ARBITRATOR

The sole issue to be resolved in this grievance is whether the grievor, Mr. R.M. Paulin, was qualified for the position of carpenter in the B&B Department, as advertised on Bulletin No. 5 on April 11, 1990. It is common ground that the work that would be assigned to the B&B carpenter is generally in the category of rough or frame carpentry, as opposed to finish carpentry or cabinet work.

The material before the Arbitrator establishes that during the course of his employment Mr. Paulin worked for approximately twelve months as a bridgeman, during which time he was assigned to perform work as a carpenter's helper. Some of that work involved assisting the bench carpenter in the Company's mill facility, where finish or cabinet carpentry is performed. The evidence further reveals that persons of similar background and qualifications have previously been deemed qualified for promotion to the position of carpenter in the B&B Department.

There can be little doubt that the incumbent who was awarded the position, Mr. Megginson, has greater experience than the grievor in carpentry work, having himself worked for a longer period of time as a bridgeman, as well as having held carpenter's seniority for a brief period. The issue in these proceedings, however, is not whether Mr. Paulin is more qualified, or even if he is relatively equal to Mr. Megginson in respect of carpenter's skills. The sole issue is whether he has the qualifications necessary to be awarded the position of carpenter in the B&B Department. That flows from the language of article 31.9, which is, in part, as follows:

13.9

Employees shall be promoted in each of the departments in order of seniority, provided they are qualified. Employees qualifying for foremen's positions must be able to read and write English and French.

On the whole of the material, the Arbitrator is satisfied that Mr. Paulin, who is senior to Mr. Megginson, did possess the skill and ability to perform the rough carpentry functions normally assigned to a carpenter in the B&B Department. While it appears that he has upgraded his carpentry skills since the time of the job posting, my finding is based on the facts as they existed at that time. While there is no suggestion before me that the Company acted other than in good faith in preferring the qualifications of Mr. Megginson, I am compelled to conclude that on the basis of his prior bridgeman's experience in the B&B Department, including substantial periods of time as a carpenters' helper both in the field and in the mill, Mr. Paulin was qualified to perform the rough carpentry and framing work normally associated with the work of a carpenter in the B&B Department. For the foregoing reasons the grievance must be allowed. The Company is therefore directed to rescind Bulletin No. 5A dated April 11, 1990, and to award the position of B&B carpenter to the grievor, with compensation for all benefits and regular and overtime wages lost as a result of the violation of his rights under the collective agreement.

June 12, 1992

(Sgd.) MICHEL G. PICHER

ARBITRATOR