CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2275
Heard at Montreal, Tuesday, 8 September 1992
concerning
CANADIAN NATIONAL RAILWAY COMPANY
and
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
EX PARTE
DISPUTE:
Claim on behalf of Mr. R. Scissons, Track Maintainer, that the Company awarded a temporary Track Maintainer position to a more junior employee.
BROTHERHOOD'S STATEMENT OF ISSUE:
On October 31, 1989 Bulletin OT-15-89 advertised a temporary Track Maintainer position in Ottawa. The position required a Class A driver's license. The grievor and Mr. S. Beauchamp applied for this position. On November 15, 1989, Mr. Beauchamp, the junior employee was awarded this position on the grounds that he had the required class of license while Mr. Scissons had only a Class D license.
The Union contends that: 1) The Company has violated Articles 3 and 7 of Agreement 10.8. 2) The position should have been awarded to the most senior employee regardless of qualifications. 3) By adding qualifications that only select employees possessed the Company could select particular employees for particular positions.
The Union requests that: The grievor be awarded the position of temporary Track Maintainer as set out in Bulletin #15, October 31, 1989, and all lost wages and expenses.
The Company denies the Union's contentions and declines the Union's request.
FOR THE BROTHERHOOD:
(SGD.) R. A. BOWDEN
SYSTEM FEDERATION GENERAL CHAIRMAN
There appeared on behalf of the Company:
D. C. Gignac
System Labour Relations Officer, Montreal
D. C. St-Cyr
Manager, Labour Relations Officer, Montreal
J. R. Ivany
Project Coordinator, Operations, Moncton
J. Little
Coordinator, Special Projects, Engineer, Montreal
And on behalf of the Brotherhood:
D. W. Brown
Senior Counsel, Ottawa
R. A. Bowden
System Federation General Chairman, Ottawa
P. Davidson
Counsel, Ottawa

AWARD OF THE ARBITRATOR

The position which is the subject of this grievance was originally established by special bulletin on the engineering Ottawa territory on August 18, 1989. The position required that the incumbent be qualified as follows:

REMARKS:

Must have the qualifications of the "D" book. Must be qualified with the driver licence Class A (condition Z) from the Ontario Minister of Transport and, successfully complete the CN truck drivers' course.

The position was awarded to Track Maintainer P. Trottier, an employee who had the qualifications. The truck in question is a five ton, dual-axle dump truck, equipped with a small crane and a trailer hook. It pulls a utility trailer which, on occasion, is utilized to transport a tractor, as well as maintenance materials such as planking or ties. It is not disputed that when the gross vehicle weight of the trailer towed by the truck exceeds 4,600 kilograms, the operator of the vehicle must possess a Class A driver's licence pursuant to Section 18(1) of the Ontario Highway Traffic Act, and regulations thereunder.

Because Mr. Trottier was assigned to another temporary position for forty-five days or more on the Montreal territory before undertaking the bulletined position, the Company was required to bulletin a temporary position to fill the assignment during his absence. That bulletin resulted in the assignment of employee S. Beauchamp who is junior to the grievor, but who possessed a Class A driver's licence at the time. Mr. Scissons, who in all other respects fulfilled the qualifications of the bulletin, and is senior to Mr. Beauchamp, did not have a Class A licence.

The grievance must stand or fall on the strength of articles 3 and 7 of collective agreement 10.8. Article 3 governs the bulletining and filling of positions. The Brotherhood's brief contains no explicit reference to article 3, but it appears that it relies upon that provision insofar as it would give access to bulletined positions to the senior, qualified employee.

Article 7 deals with training. There is no provision, however, which expressly requires that an employee be given training to qualify for a temporary vacancy which he might otherwise claim on the basis of seniority.

Counsel for the Brotherhood submits that its case is built upon three arguments. Firstly, that the Company acted unreasonably by requiring a Class A driver's licence; secondly, that article 7 of the agreement should apply in that an employee who receives a promotion should be given a certain amount of time to qualify for the new position and; thirdly, that the requirement of a Class A licence is not Company policy as applied at other locations beyond Ottawa.

The Brotherhood's submission is motivated in substantial part by the treatment of employees negotiated within the terms of a memorandum of agreement which established, in part, a new classification of Track Maintainer/Truck Driver. The principal duty of employees in that classification is to operate boom trucks and frog trucks. It submits that those vehicles can be driven by a person with a Class D licence. It questions whether a boom truck or a frog truck with a large trailer in tow would not in fact be a vehicle assigned to work equipment employees under the terms of collective agreement 10.3.

As indicated at the hearing, the Arbitrator has some difficulty following the logic of the Brotherhood's submission. The essence of its objection seems to be that it is beyond the prerogative of the Company to require track maintainers to operate heavy trucks such as the frog and boom truck or the dump truck which is at issue in this case. That position cannot prevail, however, as the very basis of the Brotherhood's grievance is that Mr. Scissons, a track maintainer, is entitled to the work in question. The core issue remains whether the Company reasonably required possession of a Class A driver's licence, and that, if it did, whether it was under an obligation to provide training to an employee applying for a temporary vacancy.

It appears that much of the Brotherhood's concern in this case flows from its view of the provisions of the memorandum of agreement of October 30, 1989 dealing with boom trucks and frog trucks. Article 3.A of that memorandum provides for the bulletining of permanent positions on each region for the two new classifications then established. Article 4.A then goes on to provide that training and licencing for the operation of boom trucks and frog trucks is to be provided to successful applicants by the Company. It also appears undisputed that the cases relied upon by the Brotherhood to establish that Company policy at other locations than Ottawa has not required a Class A driver's licence all involve employees assigned to the position of track maintainer/truck driver assigned to the operation of frog and boom trucks.

From a certain perspective the frustration of the Brotherhood is understandable. It sees an inconsistency in the Company providing prior training to applicants for the position of track maintainer/truck driver, and not providing the equivalent privilege to a track maintainer in the position of Mr. Scissons, who seeks assignment to drive a dump truck and trailer. It would appear that there are two answers to that concern, however. Firstly, while the matter was not fully addressed and should not be taken as determined in this grievance, the agreement for the training of track maintainers/truck drivers on frog and boom trucks appears to be provided to employees who are successful in obtaining a permanent position, as opposed to a temporary vacancy. Secondly, and more fundamentally, while training for the qualifications required to operate frog trucks and boom trucks was specifically negotiated between the parties, no such arrangement was ever concluded or incorporated within the collective agreement insofar as the dump truck and trailer is concerned. While it is not disputed by the Company that it owes an employee an obligation to train him or her so as to be eligible for future job bulletins, it submits that there is no collective agreement obligation to provide training in the circumstances of Mr. Scissons, which relate to a temporary vacancy being sought by an employee who does not have the formal

qualifications in advance of the competition.

The Arbitrator is persuaded that the position of the Company is correct. Firstly, it is not disputed that the track maintainer assigned to the dump truck and trailer is, on occasion, required to drive the vehicle in circumstances which, by law, require that the operator be in possession of a Class A driver's licence. The fact that that may not arise every day does not, in the Arbitrator's view, make the requirement of a Class A licence unreasonable in the circumstances. On the contrary, I am persuaded that the Company acted from a valid business purpose in establishing that qualification.

For the reasons related above, I can find nothing in the provisions of article 7 of collective agreement 10.8 which places an obligation upon the Company to provide prior training to an unqualified applicant for a temporary vacancy in the circumstances disclosed.

Finally, as noted above, the treatment of employees at other locations, relating as it does to vehicles specifically covered by the memorandum of agreement of October 30, 1989, cannot be said to constitute a contrary practice or the basis for an estoppel that would support the Brotherhood's position.

For the foregoing reasons the grievance must be dismissed.

September 11, 1992

(Sgd.) MICHEL G. PICHER

ARBITRATOR