

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2728

Heard in Calgary, Tuesday, 14 May 1996

concerning

CANADIAN PACIFIC LIMITED

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[UNITED TRANSPORTATION UNION]**

DISPUTE:

The proper placement of Trainperson D.R. Braumberger as a locomotive engineer on the seniority list after he completes his training as a locomotive engineer and is qualified to work as such, pursuant to Clause (7) of Appendix A-3 of the collective agreement.

JOINT STATEMENT OF ISSUE:

Trainperson Braumberger was originally denied acceptance into the Engineer Training Program that was advertised in Bulletin No. 227. The Union grieved this denial and contended that Trainperson Braumberger should be accepted into the next Engineer Training course and he should have his seniority date established, upon his successful completion of training and certification, based on his response to Bulletin No. 227, September 16, 1991.

Trainperson Braumberger was accepted into the next course in Moose Jaw, but his placement according to the demands of the Union would result in his being placed ahead of six other employees who had successfully completed the original course for which Trainperson Braumberger was denied acceptance.

The Company requested that the Union contact these six employees to get their concurrence that they would not object to the proposed placement of Trainperson Braumberger on the seniority list. Furthermore, the Company requested that General Chairman D.C. Curtis of the Brotherhood of Locomotive Engineers be contacted to ensure that he had no objection to handling the matter in this way.

The Union refused to comply with the Company's request and requested that Trainperson Braumberger be placed on the seniority list as originally requested.

The Company has refused the Council's request.

FOR THE COUNCIL:

(SGD.) L. O. SCHILLACI
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. E. WILSON
FOR: DISTRICT GENERAL MANAGER, PRAIRIE DISTRICT

There appeared on behalf of the Company:

R. E. Wilson	– Manager, Labour Relations, Calgary
L. J. Guenther	– Labour Relations Officer, Calgary
S. Seeney	– Labour Relations Officer, Calgary
J. Copping	– Labour Relations Research Officer, Calgary

And on behalf of the Council:

B. McLafferty	– Sr. Vice-General Chairman, Moose Jaw
K. Jeffries	– Vice-General Chairman, Cranbrook
D. Finnon	– Secretary/Treasurer, Saskatoon

S. Keene

– Vice-General Chairman, London

AWARD OF THE ARBITRATOR

The Arbitrator is satisfied that in the instant case the Company has not violated the collective agreement provisions with respect to the selection of candidates for locomotive engineer training. Quite apart from the performance of the grievor on the rules test and the aptitude test administered to all candidates, on which he did not do well, the evidence discloses that the grievor had incurred a relatively weighty record of discipline which, in the Arbitrator's view, the Company was entitled to take into account in determining his suitability for locomotive engineer training. In the result, even if I were satisfied that the Company might be required to demonstrate the results of the tests conducted, its view of the grievor's maturity, particularly as it was reflected in his disciplinary record, would, standing alone, be sufficient to support its decision. As is evident from the language of Appendix B-13 of the collective agreement, the conduct of an employee, in relation to disciplinary matters is an appropriate criterion, providing that the employee's faults have been brought to their attention. That is clearly the case here. In the result, I am satisfied that there has been no violation of Appendix A-3 or Appendix B-13 of the collective agreement.

For all of the foregoing reasons the grievance must be dismissed.

May 17, 1996

(signed) MICHEL G. PICHER
ARBITRATOR