

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2770

Heard in Montreal, Thursday, 12 September 1996

concerning

**CANADIAN PACIFIC LIMITED**

and

**TRANSPORTATION COMMUNICATIONS UNION**

### **DISPUTE:**

Union's claim that the Company violated article 24.1 when it failed to award a position of Terminal Service Representative to Mr. R. Daniels.

### **JOINT STATEMENT OF ISSUE:**

In March 1994, a position of Terminal Service Representative (Biller) was awarded to Ms. B. Bittle, who is junior in service to Mr. Daniels.

The Union contends that Mr. Daniels should have had an opportunity to train on the position advertised in Bulletin No. 92 and that the Company was in violation of article 24.1.

The Union requests that Mr. Daniels be compensated for any loss of compensation due to not being allowed to be placed on the position advertised in Bulletin No. 92.

The Company denies the claim.

### **FOR THE UNION:**

**(SGD.) R. PAGÉ**

**EXECUTIVE VICE-PRESIDENT**

There appeared on behalf of the Company:

C. Graham

P. Kelly

And on behalf of the Union:

R. Pagé

N. Lapointe

### **FOR THE COMPANY:**

**(SGD.) D. J. DAVID**

**FOR: GENERAL MANAGER, INTERMODAL SERVICES**

– Labour Relations Officer, Calgary

– Terminal Supervisor, Calgary Intermodal Terminal

– Executive Vice-President, Montreal

– Assistant Vice-President, Montreal

## **AWARD OF THE ARBITRATOR**

The record discloses that the Company awarded the position which is the subject of this dispute to Ms. B. Bittle, an employee junior to the grievor. The Company was under an obligation to award the position in accordance with article 24.1 of the collective agreement which provides as follows:

**24.1** Awards 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 28 calendar days of the appointment.

Further, the person appointed has a period of time in which to adjust and demonstrate their ability to perform the work, in accordance with article 24.4 which provides, in part, as follows:

**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/her 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. ...

It is apparent to the Arbitrator that the Company, for understandable reasons, felt an urgent need to place the best possible candidate in the position, by reason of its need to service a major client. In light of the fact that Ms. Bittle had prior experience in the billing system, in the words of the Company's own brief, "she was considered a more suitable candidate than Mr. Daniels who had no previous billing experience ...". However, in the Arbitrator's view, to so approach the issue is to ignore the agreed standard reflected in article 24.1 of the collective agreement. The question which the Company was compelled to ask itself was not whether Ms. Bittle was a better candidate than Mr. Daniels. Rather, it must first ask whether Mr. Daniels had sufficient ability and merit to perform the job, with allowance for the reasonable period of adjustment contemplated in article 24.4 of the collective agreement. In fact, as the record further reveals, the grievor was subsequently awarded a higher rated, bid position in Winnipeg which involves a substantial amount of billing work, and has apparently had no difficulty in filling the duties and responsibility of that assignment.

In the result the Arbitrator is compelled to conclude that the Company misdirected itself in considering the two candidates for the position, and failed to give effect to the fact that the grievor did have the basic ability and merit to justify his assignment to the position in question. In so concluding the Arbitrator accepts the submission of the Union that he would have attained a sufficient degree of familiarity and ability in respect of the billing function within the reasonable period contemplated within article 24.4 of the collective agreement. As was said by Arbitrator Weatherill, in **CROA 513**, commenting on the operation of article 24 of the agreement:

Article 24.1 does not set up a competition as between candidates for a posted job: an employee is entitled to promotion as long as he has "sufficient" ability and merit to perform it subject to the claims of senior employees, also with "sufficient" ability. ...

The grievance is therefore allowed. The Arbitrator finds that the grievor was entitled to be awarded the position of Terminal Service Representative and directs that the Company compensate him for all wages and benefits lost from the time of the violation until the commencement of his higher rated position of Customer Service Representative at the Winnipeg Service Centre.

September 14, 1996

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**