

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2879

Heard in Montreal, Tuesday, 9 September 1997

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Claim on behalf of Mr. R. Rota.

EX PARTE STATEMENT OF ISSUE:

As a result of BTMF, a new Welder Foreman position was created on the Revelstoke Division. The position was awarded to an employee junior to the grievor.

The Brotherhood contends that: **1.)** the grievor bid for the position and was qualified to hold it; **2.)** the Company has violated sections 13, 14 and Appendix B-17 of Agreement No. 41 and section 3(c) of the BTMF memorandum of agreement.

The Brotherhood requests that: The position in question be awarded to the grievor and that he be compensated for all monetary losses incurred as a result of this matter.

The Company denies the Brotherhood's contentions and declines the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) J. J. KRUK

SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

E. MacIsaac	– Labour Relations Officer, Calgary
R. M. Andrew	– Manager, Labour Relations, Calgary
S. Moutinho	– Labour Relations Officer, Calgary

And on behalf of the Brotherhood:

D. Brown	– Sr. Counsel, Ottawa
P. Davidson	– Counsel, Ottawa
K. Deptuck	– Vice-President, Ottawa
J. Kruk	– System Federation General Chairman, Ottawa
Wm. Brehl	– General Chairman, Pacific Region, Revelstoke

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that, based on the information provided to it, the Company did not award the position of Welder Foreman to the grievor. It does not appear disputed that as of the time the positions were awarded, the only submission made by the grievor to the Company on the bid form with respect to his qualifications as a welder indicated that he had taken certain high school courses in welding and had worked part-time in a welding shop. On that basis, I cannot conclude that the Company was in error in finding that the grievor did not qualify as a person with trackman "A" seniority with welder qualifications, being the third level of priority for applicants to the positions.

At the hearing, however, further evidence was brought forward. It is not disputed that since 1981 the grievor has held full qualifications as a welder licensed by the Province of British Columbia's Ministry of Labour, having completed tests for all welding positions. In the circumstances, I am satisfied that the Brotherhood has established that the grievor, who is senior to the incumbent, Mr. Bafaro, would have been awarded the position in preference to the junior employee, had the full facts been known. I am not persuaded, however, that in these circumstances an award of compensation is appropriate, as the grievor was to some extent the author of his own misfortune.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be awarded the position of Welder Foreman, without compensation, and that he be provided a period of training equivalent to that which was made available to employees with similar qualifications at the time of the initial job bids. Should the parties be in dispute as to any aspect of the implementation of this award, the matter may be spoken to.

September 15, 1997

(signed) MICHEL G. PICHER
ARBITRATOR