

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2902

Heard in Calgary, Tuesday, 11 November 1997

concerning

**Canadian Pacific Railway Company**

and

**Brotherhood of Maintenance of Way Employees**

**EX PARTE**

### **DISPUTE:**

The demotion of Track Maintenance Foreman (TMF) M. Bidal to the position of Track Maintainer (TM).

### **Brotherhood's STATEMENT OF ISSUE:**

On April 17, 1995, the grievor returned to work in the capacity of Track Maintenance Foreman after being off with a work related injury. On April 19, 1995, the grievor lost his driver's licence for a period of one year. As a result, the Company, on April 24, 1995, demoted the grievor to the position of Track Maintainer.

The Union contends: **1.)** That the Company violated the BTMF memorandum of agreement, sections 2(e) and 2(g), now Appendix A of wage agreement no. 41. **2.)** Prior to the loss of the grievor's licence, on April 19, 1995, he was unable to operate the section vehicle. **3.)** Other Track Maintenance Foremen who, as of this date, do not hold a valid driver's licence, have not been demoted.

The Union requests: **1.)** The the Company reinstate Mr. Bidal into his Track Maintenance Foreman position at McKerrow, Ontario, forthwith, without loss of seniority. **2.)** That the Company compensate Mr. Bidal for any loss of earnings he may have suffered, from April 19, 1995 until reinstated into his Track Maintenance Foreman position.

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

### **FOR THE Brotherhood:**

**(SGD.) J. J. KRUK**

**System Federation General Chairman**

There appeared on behalf of the Company:

R. M. Andrews – Labour Relations Manager, Calgary

E. J. MacIsaac – Labour Relations Officer, Calgary

D. Cooke – Labour Relations Manager, Calgary

D. Grimes – Observer

And on behalf of the Brotherhood:

P. Davidson – Counsel, Ottawa

D. Brown – Counsel, Ottawa

J. J. Kruk – System Federation General Chairman, Ottawa

Wm. Brehl – General Chairman, Pacific Region, Revelstoke

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### **AWARD OF THE ARBITRATOR**

The material discloses that on July 15, 1993 the Company issued bulletin no. BTMF-#1 to govern employees in the Sudbury Division seniority territory. That bulletin stated, in part, as follows:

Applicant for the positions of Track Maintenance Foreman, Leading Track Maintainer, Track Maintainer/Truck Driver and Group III Machine Operator must be in possession of current driver's licence required to operate the applicable Company vehicles, and supply a photocopy with their application.

Applicants must hold a current C.R.O.R. D card as they are required to operate on-track M/W machines. Applicants must have passed the prescribed vision and hearing requirements.

The facts further disclose that the introduction of the BTMF truck eventually lead to an adjustment in the registered weights of the vehicles, as a result of which drivers were required to hold a "D" licence. The upgrade was made to apply to the BTMF truck at McKerrow on April 14, 1994. It appears that at that time the grievor was working as a flagman.

When Mr. Bidal was convicted of impaired driving, and lost his lower graded "G" licence on April 19, 1995 he was demoted to the position of track maintainer. Subsequently, in early 1997 when Mr. Bidal sought to be reinstated to the position of Track Maintenance Foreman at McKerrow, he was allowed to assume the position, on the proviso that he obtain his class D licence within a reasonable period of time.

Article 2(g) of the BTMF Special Agreement provides as follows:

(g) If for any reason a Track Maintainer on the section is unable to drive the Section Vehicle, that duty will be performed by the Foreman.

It further appears that notwithstanding the opportunity provided to Mr. Bidal in early 1997, he did not obtain his class D licence within a reasonable period of time, a condition which apparently continues to the present.

By this grievance the Brotherhood submits that the Company has imposed qualifications in respect of the track maintenance foreman's position which are unreasonable and beyond what is necessary for valid business purposes. The Arbitrator has substantial difficulty with that submission.

Boards of arbitration have long recognized the prerogative of an employer to establish reasonable qualifications for the positions within its operations. This was acknowledged in **CROA 2649** in the following terms:

In the Arbitrator's view this grievance must be resolved by recourse to certain basic principles. As a general matter, it is within the prerogatives of the Company to establish qualifications for particular job assignments, subject only to limitations negotiated by the Union within the terms of the collective agreement. It is generally considered by boards of arbitration that an implied term of any collective agreement is that qualifications for a given position must be established by the employer in good faith, and for *bona fide*

business purposes having regard to the nature of the work in question, subject always to any specific restrictions found within the language of the collective agreement.

(See also **Re United Brewery Workers, Local 173, and Carling Breweries Ltd.**, (1968) 19 L.A.C. (Christie).)

In a case that is somewhat similar, **CROA 2275**, this Office was compelled to consider whether the Canadian National Railway Company was entitled to require track maintenance foremen to hold a particular class of driver's licence. The award sustained that position, accepting the Company's submission that the efficiency of operations could legitimately require track maintenance foremen to hold the higher graded driver's licence. In that award the Arbitrator stated, in part:

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.

The issue in this case is not, at the Brotherhood contends, whether the Company could re-order its affairs so as to make do or get by in circumstances where a given track maintenance foreman lacks the motor vehicle licensing to allow him or her to operate the only vehicle which is assigned to a BTMF crew. The issue, rather, is whether the Company's decision that such qualifications be required is reasonable in the circumstances, and is based on valid business considerations. In the material before me it appears that in fact the parties did address that question, to the extent that article 2(g) of the BTMF special agreement expressly contemplates that a track maintenance foreman should be able to drive the section vehicle when the normally assigned driver is unable to do so. In essence, the Company's position is that in an unforeseen circumstance it should be able to rely on the fact that a track maintenance foreman is able to make use of the track maintenance vehicle without being compelled to have the assistance of another employee, as chauffeur. In my view that is not unreasonable, and falls well within the parameters of what would constitute a valid business purpose.

For the foregoing reasons I am satisfied that the demotion of the grievor, who effectively disqualified himself in any event by reason of the loss of his general driver's permit, was not inappropriate. Nor was the Company in violation of any provision of the collective agreement in requiring the grievor, and any other individual seeking to hold a position of a track maintenance foreman, to hold a licence which would qualify him or her to drive the only vehicle assigned to the track maintenance crew. Further, the fact that the Company has shown some forbearance, both to Mr. Bidal, and, as it appears, to other track maintenance foremen, in giving them some time to obtain the necessary qualifications, does not support the alternative allegation of the Brotherhood with respect to alleged unfair or discriminatory treatment.

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

November 25, 1997

**(signed) MICHEL G. PICHER**

**ARBITRATOR**