

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3012

Heard in Montreal, Wednesday, 9 December 1998

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

**DISPUTE - BROTHERHOOD:**

Claim on behalf of Mr. R. Koch.

**DISPUTE - COMPANY:**

The alleged violation of article 8.9 of collective agreement 10. 1 when the Company awarded F. Turner position 134D on Bulletin PR-4 1995.

**BROTHERHOOD'S EX PARTE STATEMENT OF ISSUE:**

On Bulletin PR 4/95 Mr. F. Turner, an employee junior to the grievor, was awarded position No. 134D (a crane operator's position). The Company argued that Mr. Turner was the senior qualified employee, an assertion that the Brotherhood contests.

The Union contends that: (1) The Company violated article 8.9 of agreement 10.3

The Union requests that: It be declared that the grievor should have been awarded the position in question, that the position be awarded to him forthwith, and that he be made whole for any loss of wages, benefits or seniority incurred as a result of this matter.

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

**COMPANY'S EX PARTE STATEMENT OF ISSUE:**

On the close of Bulletin PR-4 1995, the Company awarded position number 134D to F. Turner, the senior qualified applicant who made application to the position.

The Brotherhood contends in their ex parte statement: (1) The Company

violated article 8.9 of agreement 10.3.

The Union requests that: It be declared that the grievor should have been awarded the position in question, that the position be awarded to him forthwith, and that he be made whole for any loss of wages, benefits or seniority incurred as a result of this matter.

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

**FOR THE BROTHERHOOD:**

**(SGD.) R. F. LIBERTY SYSTEM FEDERATION GENERAL CHAIRMAN**

There appeared on behalf of the Company:

F. Metcalfe

S. Michaud

**FOR THE COMPANY:**

**(SGD) J. TORCHIA**

**FOR: ASSISTANT CHIEF ENGINEER**

- Labour Relations Associate, Engineering Field Operations, Edmonton -  
Human Resources Associate, Edmonton

N. Dionne - Manager, Labour Relations, Montreal

And on behalf of the Brotherhood:

R. F. Liberty - System Federation General Chairman, Winnipeg

D. W. Brown - Sr. Counsel, Ottawa

P. Davidson - Counsel, Ottawa

**AWARD OF THE ARBITRATOR**

Upon a review of the material filed the Arbitrator is satisfied that this grievance cannot succeed. The unchallenged representation of the Company is that employee F. Turner had considerable experience as a crane operator prior to his employment with the Company in 1981. It is also not disputed that he complete a crane safety training course in 199 1. Although he held a helper's position at the time of the competition for the job which is the subject of this grievance, and he was junior to the grievor, Mr. R.F. Koch, Mr. Turner had both prior experience and training in the operation of cranes.

By contrast, Mr. Koch had so such experience. It appears that he applied for crane training in the 1994-95 season, but that the training was not in fact given in that year. In the following year, before the instant bulletin was filled, he indicated that training in speedswing was his first priority, with crane operation as a lower choice, after speedswing, boom truck and tamper. The Brotherhood invokes article 8.9 of supplemental agreement 10.3, which provides as follows:

8.9 The Company shall determine the order in which employees will receive their training. The selection will be based on seniority order to the extent practicable. However, a senior employee shall not

be denied a position in a higher classification when through no fault of his own, a junior employee is given the opportunity to take training and qualify first.

The Arbitrator has some difficulty with the submission of the Brotherhood, which is that the foregoing provision was violated in the case at hand. Firstly, it falls within the context of article 8, which deals broadly with the topic of "Machine Operator Training Program". As can be gleaned from the context in which it appears, the purpose of the provision is to ensure that employees who, through no fault of their own, do not obtain training which junior employees receive, are not thereby deprived of access to a position in a higher classification. In the case at hand, the evidence indicates that a number of training opportunities in crane operation were available to the grievor. By the Brotherhood's account some sixty-three crane courses were offered by the Company on the Prairie Region from 1990 to 1995. While some of those related to boom truck and speedswing operation, fourteen are said to have been crane safety courses and thirteen others to be crane related courses. There is no evidence before me that Mr. Koch attempted to enrol himself in any of those courses, prior to 1994-95. In that circumstance it is difficult to conclude that the higher degree of training achieved by Mr. Turner relative to Mr. Koch was "through no fault of his own" within the meaning of article 8.9 of supplemental agreement 10.3. While Mr. Koch may best appreciate why he did not seek crane operator training between 1990 and 1994, there is no evidence before the Arbitrator to suggest that he was prevented from doing so for reasons beyond his control. The Arbitrator must agree that in the circumstances the Company has complied with article 15.3 of collective agreement 10. 1 which provides, in part:

15.3 Appointments shall be made by the officer issuing the bulletin.  
Employees will be  
awarded positions  
in order of seniority provided they are qualified.

In the case at hand the grievor was not qualified, and for the reasons related cannot invoke the protections of article 8.9 of supplemental agreement 10.3.

For these reasons the grievance must be dismissed.

December 14, 1998

**MICHEL G. PICHER**  
ARBITRATOR