

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 293

Heard at Montreal, Tuesday, June 8th, 1971

Concerning

### CANADIAN PACIFIC EXPRESS COMPANY

and

### BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

#### DISPUTE:

Claim of employee J. Fawson, Toronto, that he should have been awarded the position of Clerk I-2 in the Accounts Department, Obico Terminal, posted on Bulletin No. 103 dated September 2, 1970.

#### JOINT STATEMENT OF ISSUE:

The Brotherhood contends that employee Fawson was wrongfully denied the position because of his refusal to undergo a test to enable the Company to make an initial determination of his qualifications.

Article 7.1 (a) reads as follows:

The promotion and assignment of employees will be governed by seniority and ability, senior qualified applicant to be given preference. The officer of the Company in charge shall be the judge, subject to appeal, which must be made in writing within 14 calendar days of the appointment.

#### **FOR THE EMPLOYEES:**

**(SGD.) L. M. PETERSON**  
GENERAL CHAIRMAN

#### **FOR THE COMPANY:**

**(SGD.) J. T. HARFORD**  
DIRECTOR, PERSONNEL

There appeared on behalf of the Company:

F. E. Adlam	– Industrial Relations Representative, Toronto
J. T. Harford	– Director Personnel, Toronto
J. G. MacMillan	– Supervisor Personnel, Toronto
R. J. Daniels	– Regional Manager, Toronto
H. R. Pierce	– Terminal Operations Manager, Toronto

And on behalf of the Brotherhood:

L. M. Peterson	– General Chairman, Toronto
G. Moore	– Vice General Chairman, Toronto
F. C. Sowery	– Vice General Chairman, Montreal
M. Peloquin	– Administrative Assistant to International Vice-President, Montreal
J. F. Danhower	– Local Chairman, Toronto

## AWARD OF THE ARBITRATOR

The job in question, known apparently as that of “cheque processor” seems to have been established as a new job, involving tasks which were formerly included in other jobs. The grievor, an employee of some 18 years’ seniority, has performed a number of clerical jobs involving tasks closely related to the tasks of the job in question, and has in fact operated adding machines, which is, it seems, the central task of the job in question. It seems that in such jobs, however, the grievor operated an adding machine only incidentally to the basic duties involved.

The company rejected the grievor because he would not undergo a test of “basic qualifications”. The grievor’s entitlement, of which the company’s officer is to be the judge (subject to appeal), depends on his having the seniority and qualifications for the job. There is no question here of seniority, and it may be said, as it was in **Case No. 258**, that the grievor’s experience would indicate his apparent qualifications for the job.

Article 7.1(b) of the collective agreement is as follows:

**(b)** An employee who is assigned to a position by bulletin, will receive a full explanation of the duties and reasonable assistance and must demonstrate the ability to perform the work within a reasonable probationary period of up to 30 calendar days, the length of time to be dependent upon the character of the work. Failing to demonstrate the ability to do the work within the probationary period allowed, employee shall be returned to former position without loss of seniority.

In Appendix A to the collective agreement it is stated that the intent of the qualification provisions is that the senior employee shall, whenever there is a reasonable likelihood that he will qualify for a position, be given a trial period of sufficient duration, not to exceed thirty days, to properly assess his capability to perform the duties. In the first instance, it is for the officer of the company in charge to make the assessment whether or not there is a reasonable likelihood that an applicant will qualify for a particular job. The determination whether or not he actually can do the job satisfactorily is made after the trial period. The issue is not, therefore, whether the grievor actually could perform the work satisfactorily, but whether he appeared to have sufficient ability to be entitled to a trial period.

The collective agreement does not expressly provide for the imposition of tests by the company, but it seems clear to me that the company could quite properly require employees to undergo tests in order to enable it to make the determination it is required to make under Article 7. The reliability of the test results could well be subject to question (*see, for example, the Polymer Case 19 LAC 386*), but no such issue arises here. Here, essentially, it is the grievor’s position, it seems, that it was embarrassing for him to have to undergo a test of “basic skill” with respect to work he had already performed. His attitude may have been understandable, but it was nevertheless wrong, and he should have gone through whatever procedures the company required, however futile they may have seemed to him. While it may be said that the grievor ought to have taken the tests, it does not follow that his grievance should be dismissed. Even if the grievor had taken the test and failed it, he would have been entitled to have his case considered. The issue is not one of success or failure in a test, but one of there appearing to be a reasonable likelihood of his qualifying for the position.

In the case of an experienced employee, who has in fact performed the tasks in question (albeit incidentally to other work) a test of “basic skill” would appear to have little relevance to the grievor’s rights under the collective agreement, although, as I have said, the company could be entitled to require it. The material before me leads to the conclusion that the grievor did have the apparent qualifications for the job, and there is nothing which would support the contrary conclusion. Being the senior applicant, the grievor was entitled to the trial period provided for in the collective agreement, and I so award. Because of his refusal to follow the procedure required by the company, he would not be entitled to any compensation if it is determined, after a trial period, that he is qualified.

**(signed) J. F. W. WEATHERILL**  
ARBITRATOR