

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 355

Heard at Montreal, Tuesday, May 9th, 1972

Concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

and

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

### **DISPUTE:**

The Brotherhood claims that the Company violated Rule 8(a) of the Collective Agreement when they failed to promote Messrs. Zannis and Stanbra to positions of Clerk (Tracing) advertised in Bulletins Number 197 and 198 dated June 18, 1971.

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

Messrs. Zannis and Stanbra entered the Company's service in the Office of the Car Accountant in March 1971.

Under date of June 18, 1971, Bulletins Number 197 and 198 advertising temporary positions of Clerk (Tracing) were posted in the Office of the Car Accountant.

Messrs. Zannis and Stanbra filed an application for these positions, and when the Company did not promote these employees the Union requested the Company to furnish their reasons in writing.

The Company replied that they did not consider Messrs. Zannis and Stanbra as permanent employees, as defined in Article 5(c) of the Collective Agreement, as amended effective May 1, 1971, and were, therefore, under no contractual obligation to award them these positions.

The Brotherhood disputed this action and claimed loss of wages on behalf of these employees. The Company declined payment of the claims.

### **FOR THE EMPLOYEES:**

**(SGD.) W. T. SWAIN**  
**GENERAL CHAIRMAN**

### **FOR THE COMPANY:**

**(SGD.) J. W. MALCOLM**  
**CHIEF OF TRANSPORTATION**

There appeared on behalf of the Company:

D. Cardi – Labour Relations Officer, Montreal  
R. Parsons – Office Manager, Chief of Transportation Office, Montreal

And on behalf of the Brotherhood:

W. T. Swain – General Chairman, Montreal  
T. Cairns – Vice-General Chairman, Secretary Treasurer, Montreal

### AWARD OF THE ARBITRATOR

At the time the grievors entered the Company's service, their employment status was subject to the provisions of Article 5(c) of the collective agreement then in effect. The effect of the article was that the grievors would remain probationary employees for a period of six months. That article was as follows:

- (c) A new employee shall not be regarded as permanently employed until after six (6) months' service, and, if retained, shall then rank on the seniority roster from the date first appointed to a position covered by this agreement. In the meantime, unless removed for cause, which, in the opinion of the Company, renders him undesirable for its service, the employee shall be regarded as coming within the terms of the agreement.

As long as the grievors were subject to the provisions of that article, it may be doubted whether they would be entitled to assert claims based on the principle of seniority. They would, in accordance with the last sentence of the article, "be regarded as coming within the terms of the agreement" generally, but since one of the terms expressed in that very section is that they would not "rank on the seniority list" until the completion of the probationary period, it would seem that they would be unable to advance claims based on seniority until that time.

That question need not be decided here, however, because the provisions of the collective agreement were amended effective May 1, 1971, so that the article in question now reads as follows:

- A new employee shall not be regarded as permanently employed until after 65 days' cumulative service, and, if retained, shall then rank on the seniority roster from the date first appointed to a position covered by this agreement. In the meantime, unless removed for cause, which, in the opinion of the Company, renders him undesirable for its service, the employee shall be regarded as coming within the terms of the Agreement.

At the time of the job posting, the grievors' terms and conditions of employment were governed by the provisions of the collective agreement then in effect. In particular, their attainment of permanent employment status was governed by the provisions of Article 5(c) as amended effective May 1, so that they would achieve such status after 65 days' cumulative service. It seems they had had 65 days' cumulative service at the time of the job posting, and so would be entitled to assert claims based on their seniority status. In the instant case, there was no issue raised as to the grievors' ability and merit; their applications were rejected on the ground of their being probationary employees, and it is on that issue that this matter is determined. At the hearing, mention was made of the grievors' lack of work experience, but that is not an issue raised in the submission to arbitration.

It was contended by the Company that the amendment relating to the length of the probationary period was not intended to have any retroactive effect. It is not a question, however, of changing the situation as it existed before the effective date of the amendment. Rather, it is simply the case that on the effective date of the amendment, the rules changed. There is no reason why employees should not have the advantage, or the disadvantage, of such a change. If the probationary period had been lengthened, they would then be subject to that longer period, although it could be that different considerations would apply in the case of employees who had in fact achieved seniority status under the earlier provisions. In the instant case, if the Company's position were correct, employees hired later than the grievors could achieve seniority status under the new agreement while the grievors were still probationers under the old. There is no need to create anomalous situations such as that, by concluding that the collective agreement does not apply equally to all employees.

Accordingly, it is my conclusion that the grievors were entitled to assert claims to the jobs in question based on their seniority. Since that is the only issue raised in this case, it follows that the grievance must succeed. The grievors are entitled to the promotions in question, and to compensation for loss of earnings, and I so award.

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