# CANADIAN RAILWAY OFFICE OF ARBITRATION

# CASE NO. 411

Heard at Montreal, Tuesday, June 12th, 1973

Concerning

## CANADIAN PACIFIC TRANSPORT COMPANY LIMITED

and

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

## DISPUTE:

Union claims violation of Article 24.4 of the collective agreement.

## JOINT STATEMENT OF ISSUE:

Mrs. J. Fredriksson, whose seniority date is May 1st, 1972, applied for the position of Adjustment Clerk (Bulletin #55). Bulletin #55 was awarded to Miss Myrna Wilson, whose seniority date is July 29th, 1963, a junior employee.

The Union contend Mrs. Fredriksson be awarded the position and allowed a trial period in which to demonstrate her ability to do the work (Article 24.4). The Company declined to award the position to Mrs. Fredriksson.

## FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) R. WELCH (SGD.) G. E. GRANT

GENERAL CHAIRMAN Vice-President & COMPTROLLER

There appeared on behalf of the Company:

J. J. Cowan – Director, Personnel, Toronto

A. E. Beveridge – Manager, Revenue Accounting, Vancouver

And on behalf of the Brotherhood:

R. Welch – General Chairman, Vancouver

W. T. Swain – General Chairman, Montreal

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## AWARD OF THE ARBITRATOR

Article 24.4, on which the Union relies, is as follows:

> **24.4** An employee assigned to a position by bulletin will receive a full explanation of the duties of the position and must demonstrate his ability to perform the work within a reasonable period of up to thirty calendar days, the length of time to be dependent upon the character of the work. Failing to demonstrate his ability to do the work within the period allowed, he shall be returned to his former position without loss of seniority.

This article provides for what is in effect a trial period for employees assigned to bulletined positions. It does not in itself deal with the question of

who is entitled to be assigned to such positions, although the fact that a trial period is available may be relevant to a consideration of the effect of other provisions. In the instant case, the substantial question is whether the grievor was entitled to the position of Adjustment Clerk, even for a trial period. On this question, the material provisions of the collective agreement were the following:

> **24.1** Promotion shall be based on ability, merit and seniority; ability and merit being sufficient, seniority shall prevail. The officer of the Company in charge shall be the judge, subject to appeal, such appeal to be made in writing within fourteen calendar days of the appointment.
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> **24.2** Should an employee not be promoted in his turn, the local representative of the employee shall, upon written request, be furnished with the reasons therefor in writing.

Here the grievor was senior to the successful applicant for the job. Since she was not promoted, reasons therefor were furnished, in writing, to the Union pursuant to Article 24.2. Article 24.1 does not provide for automatic promotion of senior employees, but such persons are entitled to promotion where they have "sufficient" ability and merit for the job. It is not a case where there is a contest between employees, and it would not be material that another applicant might be better qualified than the grievor. She would be entitled to success if she could show she had sufficient ability and merit for the assignment the collective agreement specifically provides that the officer of the Company in charge is to be the judge of this question. Provisions similar to this have been dealt with in a number of other cases in the Canadian Railway Office of Arbitration, including **Cases 123, 124** and **258**.

Under a provision such as Article 24.1 the Union, to succeed in the grievance, must show that the judge of the matter – that is, the officer of the Company in charge – made his determination in an improper manner. If it succeeds in that, so that the Company's decision is set aside, then it is still necessary for the Union, to succeed in the grievance, to show that the grievor has sufficient ability and merit for the job. In the instant case, while it was suggested that the grievor's activity as a Union representative had prejudiced the Company's view of her, there is nothing tangible in the material before me to support a finding that a discriminatory or arbitrary decision was reached. The grievor had, it seems, worked in several positions over a number of years. Certainly she was entitled to be considered, and the material makes clear that her application for the job in question was considered. There is no sufficient reason to conclude that the consideration given her application was discriminatory or arbitrary.

In any event, even if it were concluded that the Company had not complied with the requirement of giving fair consideration to applications under Article 24, it has not been shown that the grievor had sufficient merit and ability to be assigned to the position. The Company set out various reasons relating the grievor's work performance which led it to conclude that she would not have been assigned to the position even if she had been the only applicant. As was said in **CROA Case No. 124**, it is a question of matching the employee with the job. In the instant case it has not been shown that the grievor had sufficient merit and ability for the job in question.

For the foregoing reasons, the grievance must be dismissed.

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

**ARBITRATOR**