

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 513

Heard at Montreal, Tuesday, September 9th, 1975

Concerning

**CANADIAN PACIFIC LIMITED**

and

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

### DISPUTE:

Claim by Mr. M. Clarkin of Toronto Yard account not being promoted in his turn.

### JOINT STATEMENT OF ISSUE:

A position of Car Checker at Toronto Yard was advertised under bulletin No. 139 dated October 29, 1974.

Mr. M. Clarkin was the senior applicant for this position but it was awarded to a junior employee.

The Union maintained that Mr. Clarkin had sufficient ability to perform the duties of a Car Checker and should have been awarded this position in accordance with the provisions of Article 24.1 and requested that he be awarded the position and reimbursed for lost wages.

The Company refused the Union's request.

### **FOR THE EMPLOYEE:**

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

### **FOR THE COMPANY**

**(SGD.) L. A. HILL**  
**GENERAL MANAGER, OPERATIONS & MAINTENANCE**

There appeared on behalf of the Company

B. P. Scott – Assistant Supervisor Labour Relations, Toronto  
D. Cardi – Labour Relations Officer, Montreal

And on behalf of the Brotherhood.

W. T. Swain – General Chairman, Montreal  
D. Herbatuk – Vice General Chairman, Montreal  
J. MacPherson – Vice General Chairman, Toronto

### **AWARD OF THE ARBITRATOR**

Article 24.1 of the collective agreement provides generally that promotion is to be based on ability, merit and seniority; ability and merit being sufficient, seniority is to prevail. In this case, the Company advertised the job in question, but none of the employees who had achieved seniority status pursuant to Article 21.5 applied. The grievor and another, junior employee, submitted bids. Both the grievor and the other employee were probationary employees, not yet having achieved seniority status under Article 21.5.

In my view, employees are not prevented from bidding on posted jobs merely by reason of their not yet having achieved seniority status. Article 5.2 provides that “employees” may submit applications for vacancies, without restriction. While probationary employees will not have seniority rights to protect their employment, there still will exist, as between such employees, differences in length of service which may be taken into account for the purpose of Article 24.

I conclude, then, that the grievor was entitled to apply and to be considered for the job in question. There appears to be no question as to his ability generally to carry out the main functions of the job, which involves the recording of the initials and numbers of railway cars. One requirement of the job is that the employee have a legible handwriting. It was on this ground that the Company concluded (apart from the matter of lack of status, which I have dealt with above), that the grievor was not suitable. In the job he held at the time the grievor was required to keep a record of the numbers of advice notes mailed to the Company’s customers, and to address such notes. He had performed this work in a sloppy fashion and had been admonished with respect to it. The other employee had a legible handwriting, and was awarded the job.

Article 24.1 does not set up a competition as between candidates for a posted job: an employee is entitled to promotion as long as he has “sufficient” ability and merit to perform it subject to the claims of senior employees, also with “sufficient” ability. While the Company’s determination was no doubt made in good faith, I think it could not properly be said that the grievor did not have sufficient ability to perform the work in question. He could write, but his writing and figures were sloppy. Certainly it was proper to require a legible handwriting, but it was not certain that the grievor could not in fact meet that requirement with respect to the new job. He could write, the question was whether he could write well enough.

Article 24.4 of the collective agreement 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, and the position shall be awarded to the next senior qualified employee who has applied.

In my view, this was a case in which the grievor did have “sufficient” ability to be assigned to the job, and to demonstrate such ability within the time there provided for. Subsequent events corroborate this view: the grievor was awarded a similar job on a later bulletin, and his handwriting has improved.

For the foregoing reasons, I conclude that the grievor ought to have been awarded the job in question. The grievance is therefore allowed

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