

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 601

Heard at Montreal, Tuesday, March 8, 1977

Concerning

CANADIAN PACIFIC LIMITED

and

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

DISPUTE:

The Union contend that Mr. T.M. Marshall, a senior applicant, should be awarded the position of Senior Clerk – Balance Sheet.

JOINT STATEMENT OF ISSUE:

Mr. Marshall applied for the position of Senior Clerk – Balance Sheet Section, a position covered by article 5 of the Collective Agreement.

The position was awarded to Mr. T.P. Van Raes, a junior employee.

This dispute has been processed through the grievance procedure.

FOR THE EMPLOYEE:

(SGD.) R. WELCH
SENIOR GENERAL CHAIRMAN

FOR THE COMPANY:

(Sgd.) J. A. SABOURIN
ASSISTANT DIRECTOR OF ACCOUNTING

There appeared on behalf of the Company:

G. M. Booth – Personnel Officer, Finance & Accounting, Montreal
R. A. Marks – Assistant Manager Disbursement Accounting, Montreal
D. Cardi – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

R. Welch – System General Chairman, Vancouver
R. C. Smith – National Vice President, Montreal

AWARD OF THE ARBITRATOR

Article 24.1 of the collective agreement is as follows:

- 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.

Under this provision it may be that the grievor, as senior applicant, would have been entitled to the job in question. There is no doubt that he was qualified for it in most respects, although it is the Company's position that his lack of experience in balance sheet work was of sufficient importance that it could not in any event be said that the grievor had sufficient ability and merit for the job. It would seem that it was only with respect to this one type of experience that the grievor's qualifications were insufficient. Even if it be assumed that the grievor did have sufficient ability and merit for the job, however, and while he would then be entitled to it by virtue of his seniority if article 24.1 applied, the fact is that appointment to the job of Senior Clerk is governed by article 5 of the collective agreement, not by article 24. Article 5.1 is as follows:

- 5.1** The Company shall have the right of appointment to the positions listed in Clause 5.3 except that seniority shall be a considering factor in filling vacancies in such positions and in filling new positions. The appropriate officer of the Company shall be the judge, subject to appeal.

The job in question is one of those listed in article 5.3. In such a case, even assuming that the grievor could be considered qualified his greater seniority is only a "considering factor" and would not entitle him to the job. The Company expressly has a "right of appointment" and while its judgment is subject to appeal, the matter is clearly different from one arising under article 24.1, where a senior qualified employee is entitled to appointment. Under a clause such as article 5, it is my view that for an arbitrator to set aside the Company's decision it would have to be shown that the Company acted unfairly, or according to a wrong principle. That has not been shown here. Whatever weight is to be given to the grievor's lack of balance sheet experience there is no doubt that it is an important aspect of the work and it was not improper of the Company to have regard to it.

On the material before me it has not been shown that the Company exercised its right of appointment improperly. There has been no violation of the collective agreement, and the grievance must accordingly be dismissed.

(sgd.) J. F. W. WEATHERILL
ARBITRATOR