

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 651

Heard at Montreal, Tuesday, February 14, 1978

Concerning

CANADIAN PACIFIC LIMITED

and

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

EX PARTE

DISPUTE:

Selection of Trainees at Calgary, Alberta, for Dispatchers' Training Program.

EMPLOYEES' STATEMENT OF ISSUE:

On February 14, 1977, the Company bulletined for six (6) relief Train Dispatchers at Calgary and on March 4, 1977, appointed six (6) candidates to attend Dispatchers' training school.

The Union claims that the Company should have appointed the relief Train Dispatchers under Articles 8.02 and 6.01 and then selected candidates for training under Article 40.02.

The Company denied the claim.

FOR THE EMPLOYEES:

(SGD.) D. C. DUQUETTE
GENERAL CHAIRMAN

There appeared on behalf of the Company:

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| M. M. Yorston | – Labour Relations Officer, Montreal |
| P. Timpson | – Assistant Supervisor, Labour Relations, Vancouver |
| H. MacAulay | – Superintendent, Vancouver |

And on behalf of the Brotherhood:

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| D. C. Duquette | – General Chairman, Montreal |
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AWARD OF THE ARBITRATOR

At the hearing of this matter, the Company raised the preliminary objection that in the case of one of the four individuals on behalf of whom this grievance is brought had not filed a timely grievance. In fact, no individual grievance forms appear in the material before me. Three of the employees concerned did communicate a complaint relating to their non-appointment to the posted vacancy. The Union representative advised that the fourth person, Mr. Seifert, did so as well. The grievance put forth by the local chairman is general in form and covers the whole matter of the sufficiency of the posting, rather than individual cases. There is no document before me in which the Company objects to proceeding with the case of Mr. Seifert. In the circumstances, it is my view that his rights should now be assessed on the same basis as those of the other employees involved.

Articles 8.02 and 6.01 of the collective agreement are as follows:

8.02 Spare Dispatchers will be appointed from their respective seniority districts, if available, in accordance with Article 6.01., the bulletin to state the division headquarters of each position advertised. Appointees will be allowed sufficient time to learn the work of dispatching under a Dispatcher, such time not to exceed two weeks or such longer period as may be considered necessary by the Company officer concerned. Employees being trained under this Article will be governed by the provisions of Article 40.02.05. Dispatchers who are providing the training under this Article will be paid in accordance with Article 40.01.03.

6.01 Except as provided in Article 7.16, all vacancies and appointments for sixty calendar days or over will be bulletined immediately by "23" message over the seniority district on which they occur; and when allotted shall be known as established positions. Positions advertised as temporary will be bulletined as permanent at the expiration of one year unless otherwise mutually agreed between the Superintendent and the Local Chairman. If it is known prior to the expiration of one year that the position will be required permanently, it shall be so bulletined.

On January 5, 1977, the Company issued Bulletin No. 1, inviting applications for six vacancies as Relief Train Dispatcher. A number of employees, including two of the grievors, applied, the names of the applicants being posted in Bulletin No. 5, on January 19. It seems to have been agreed between the parties that none of the applicants had sufficient experience (that at least is the Union's view of the matter) and it was agreed in any event that Bulletins 1 and 5 would be cancelled.

That was done by Bulletin No. 8 on February 14, 1977, which again invited applicants for six Relief Train Dispatchers' positions. The bulletin indicated that "considerable train order experience" was required, and that applicants should be prepared to take a six-week course, followed by on-the-job training. A number of employees, including the grievors, applied on this posting, and on March 4, 1977, the Company issued Bulletin No. 9, listing the successful applicants.

Among the successful applicants was a Mr. Cox, an employee of considerable seniority, who had not bid on the earlier bulletin. The other applicants, who would appear to have less seniority than the grievors, had all applied on the earlier posting. If in fact they had been considered unqualified at that time, it is difficult to understand how they would have become qualified in the interval, particularly when the only significant change in the job bulletin appears to have been an insistence on "considerable train order experience".

The Union's contention is that the bulletins, especially Bulletins 8 and 9, are in error, and that the Company, having bulletined for Relief Train Dispatchers, then appointed Dispatcher Trainees. In my view, this contention is correct.

While the original bulletin seeking Relief Train Dispatchers may have lacked detail as to the qualifications required (so that the parties' agreement to cancel it is understandable) it was, in my view, a sufficient posting of the vacancies in the Relief Train Dispatcher classification. The question of whether or not some or any of the applicants on that posting were qualified for the position is not before me. That question would no doubt be answered bearing in mind, among other considerations, that a training period is contemplated under Article 8.02. The reference to Article 40.02.05, which appears at the end of Article 8.02 (and which was added thereto by the Memorandum of

Agreement of March 2, 1976) refers to the method of payment of persons who, being appointed on a Spare Dispatcher posting, then take a training period.

The second posting, Bulletin No. 8, was, again, a sufficient posting for vacancies in the classification of Relief Train Dispatcher (or "Spare Dispatcher"). It would seem that, generally, such vacancies should be filled by the appointment of the senior person who, in the Superintendent's opinion, "is entitled to it" (Article 6.06). The establishment of the qualifications for a position is a prerogative of management, subject to any restrictions set out in the collective agreement. Clearly, under this collective agreement management has a considerable discretion in making appointments. It may not, however, make appointments to positions which have not been bulletined.

The appointments announced by Bulletin No. 9 were appointments of those "selected to attend the Dispatchers' training school". While the bulletin used rather loose terms, consideration of the parties' positions and correspondence leaves no doubt that what was meant by this was the appointment of Dispatcher Trainees. Dispatcher Trainees are not Relief Train Operators. The two classifications are distinct. A Relief Train Operator, appointed as such pursuant to Article 8.02 may indeed be required to undergo training, and his appointment may be subject to the successful completion of such training, but subject to that qualification his appointment is and remains one of Relief Train Operator, on an advertised position.

A Dispatcher Trainee, however, undergoes training and, if successful, establishes seniority as a Dispatcher. This is done pursuant to Article 40 of the collective agreement which establishes a Dispatchers' training program. The Company selects trainees and determines the criteria by which they are to be selected. That is not in issue here. Article 40.02.02 provides as follows:

40. 02.02 The opportunity to participate in the Dispatchers' training program will be bulletined firstly to all employees governed by this collective agreement.

Bulletin No. 8 was not one offering "the opportunity to participate in the Dispatchers' training program". It was, rather, an offering of "six relief Train Dispatchers' positions". Bulletin No. 9, which ought to have been an announcement of the successful applicants for the Relief Train Dispatcher jobs (or perhaps an announcement that there were no – or insufficient – qualified applicants) announced instead appointments to the training program. The provisions of the collective agreement simply did not authorize such a bulletin in the circumstances.

Accordingly, the grievance is allowed. In its statement of issue the Union claims that there should have been an appointment of Dispatchers and then a selection for training. By Article 8.02, a person appointed as a Spare Dispatcher is to be allowed sufficient time to learn the work. That is not the same thing as selection for participation in the training program pursuant to Article 40 (even although the same training may be involved). It is for the Company to decide if it wants Spare Dispatchers or Trainees, or both. It must then bulletin its vacancies for Spare Dispatchers or its opportunities for Trainees, and make its selections in accordance with the collective agreement. The successful Spare Dispatcher will (if he succeeds in learning the work) be a Spare Dispatcher and have a position. The successful Trainee however, will, as such, have a place on the seniority list.

My award in this matter must be to declare that Bulletin No. 9, issued on March 4, 1977, is void. It will be open to the Company to make a proper determination with respect to the applications on Bulletin No. 8, or to post a bulletin pursuant to Article 40.02.02. In any event, any seniority rights which may have been acquired by junior employees as a result of the Company's action in issuing Bulletin No. 9 must be subordinated to any such rights any of the grievors might acquire in the event of their success on Bulletin No. 8 or on the next bulletin the Company might issue pursuant to Article 40.02.02. Any claim for compensation for the grievors would have to await the determination of that issue.

(signed) J. F. W. WEATHERILL
ARBITRATOR