

# CANADIAN OFFICE OF ARBITRATION

## CASE NO. 655

Heard at Montreal, Tuesday, February 14, 1978

Concerning

**CANADIAN PACIFIC LIMITED**

and

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**EX PARTE**

**DISPUTE:**

Claim of the Union that the Company violated Section 14.1 of Wage Agreement #17 when it failed and refused to bulletin a Group #3 machine operator's position (highway vehicle operator) at Lloydminster and assigned the work accruing thereto to the section foreman. Claim is for said position to be bulletined.

**JOINT STATEMENT OF ISSUE:**

The Union contends that the work of operating the highway vehicle assigned to the section gang at Lloydminster, Sask. belongs to a Group 3 machine operator and that such position is subject to bulletin under the provisions of Section 14.1 of Wage Agreement #17, the September 12, 1969 Memorandum of Agreement and the September 12, 1969 Letter of Understanding as amended October 23, 1969.

It is the position of the Company that as the Section Foreman in charge of the section gang headquartered at Lloydminster was available and capable of driving the highway vehicle assigned to his gang, there was no requirement to bulletin for a Group 3 Machine Operator.

**FOR THE EMPLOYEE:**

**(SGD.) A. PASSARETTI**  
**GENERAL CHAIRMAN**

**FOR THE COMPANY:**

**(SGD.) R. J. SHEPP**  
**GENERAL MANAGER, OPERATION & MAINTENANCE**

There appeared on behalf of the Company:

J. Sampson – Supervisor Labour Relations, Winnipeg  
J. E. Cameron – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

A. Passaretti – System Federation General Chairman, Ottawa  
H. J. Thiessen – Federation General Chairman, Calgary  
L. DiMassimo – General Chairman, Montreal

### **AWARD OF THE ARBITRATOR**

Article 14.1 of the collective agreement is as follows:

**14.1** Except as otherwise provided in Clauses 14.4 to 14.6, inclusive, and except for positions of trackman B which need not be bulletined, employees shall be advised by bulletin on the 1st and 15th of each month of all vacancies or new positions in their department (except official positions), including the positions of extra gang foreman and assistant foreman. Bulletins will be posted promptly in places accessible to all employees affected. A copy of each bulletin will be furnished to the Local Chairman and General Chairman of the territory involved.

This rule is not intended to preclude the issuance of individual bulletins on other than the 1st or 15th days of the month should circumstances so warrant in any particular instance.

The Union contends that on or about February 23, 1977, there was a vacancy in a position of Group 3 Machine Operator on the section gang located at Lloydminster. There is nothing in the material before me to show in any detail what had been the size or consist of the section gang, or what change in the consist of the gang or in the work required of it would indicate that a "vacancy" existed. A vacancy in a classification is generally said to exist when the employer determines that there is a job of work it requires to be done in that classification. For the purposes of this case, I think it is fair to assume that the Company did require the operation of the highway vehicle assigned to the section gang in question, but on the material before me no finding can be made as to the extent to which such operation has been required.

On the assumption, then, that the Company required the operation of the highway vehicle in connection with the work of the section gang in question, was it necessary for the Company to bulletin a Group 3 Machine Operator's position? If it had been the case that a Group 3 Machine Operator, whose work had included the operation of the highway vehicle had left the assignment, and if the Company still required that job to be filled, then there would be said to be a vacancy in the position and the Company would be required to bulletin it pursuant to Article 14.1 of the collective agreement. There is nothing in the material before me, however, to indicate that that is the case here.

Rather, it appears that the Company has been assigning the work of operation of the highway vehicle to an employee in a higher-rated classification, as a part of his duties. There is nothing to indicate that this represents any change from what has occurred since the time in 1969 when the highway vehicles were introduced, and their operation was included, by agreement, in the tasks to which Group 3 Machine Operators might be assigned.

I was not referred to any provision in the collective agreement or any sort of authority for the proposition that the operation of highway vehicles was exclusively the province of Group 3 Machine Operators, although there is no doubt that that is one of the tasks which Group 3 Machine Operators may be called on to perform. If, in the course of his duties, a Foreman, an Assistant Foreman or an employee in some other classification operates a highway vehicle, then a question may arise whether or not that employee is performing work outside of his own job classification. If such person performed the work of operating a highway vehicle exclusively, then the question might arise whether he was properly classified. That is not, however, the question in this case.

In the instant case, it appears to be the thrust of the Union's contention that where there is a highway vehicle assigned to a section gang, that vehicle can only be operated by a Group 3 Machine Operator. The agreement of the parties that the operation of a highway vehicle comes within the scope of a Group 3 Machine Operator's work, however, does not involve the conclusion that only Group 3 Machine Operators may operate highway vehicles. There may be an overlap as between one or more classifications with respect to particular tasks, as many cases have held. It is not necessarily a violation of the collective agreement for an employee in another classification to operate a highway vehicle. The matter may turn on the amount of work involved and on the particular circumstances of the case. In the instant case, the material before me does not show that there was in fact a vacancy in a position of Group 3 Machine Operator, even although some operation of a highway vehicle was performed by someone else.

No violation of the collective agreement has been established and the grievance must accordingly be dismissed.

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