

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 702

Heard at Montreal, Tuesday, April 10th, 1979

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

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

DISPUTE:

Claim by the Union that the senior applicant Mr. P. Arnold should have been awarded the position of Senior Clerk-Rates advertised April 10, 1978.

JOINT STATEMENT OF ISSUE:

Bulletin 139 dated April 10, 1978 advertising the position of Senior Clerk-Rates was awarded to an employee junior in seniority to Mr. P. Arnold senior applicant. The Union contended that under Article 24.1 Mr. Arnold should have been awarded this position and grieved accordingly.

The Company denied the grievance.

FOR THE EMPLOYEE:

(SGD.) W. T. SWAIN
GENERAL CHAIRMAN EASTERN REGION

FOR THE COMPANY:

(SGD.) L. A. HILL
GENERAL MANAGER, O&M

There appeared on behalf of the Company:

E. S. Cavanaugh – Supervisor, Labour Relations, Toronto
D. Cardi – Labour Relations Officer, CP Rail, Montreal
G. D. Smith – Assistant Supervisor, Labour Relations, Toronto
E. L. Woodman – Supervisor, Customer Service Centre, Toronto

And on behalf of the Brotherhood:

W. T. Swain – General Chairman, Montreal
J. MacPherson – Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

The grievor, an employee of some twenty years' seniority was occupying the position of Assistant Accountant-Cashier when the position of Senior Clerk-Rates was advertised. He was, it seems, the senior applicant for the position, or was at any rate senior to the employee who was awarded the job.

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.

As senior applicant, the grievor would be entitled to be appointed to the job of Senior Clerk-Rates if his "ability and merit" were sufficient. The officer of the Company in charge is to be the judge of that, but his decision in the matter is subject to appeal.

In making its determination that the grievor did not have the ability to perform the job in question the Company had regard to the fact that, in the exercise of seniority, the grievor had been allowed to displace a junior employee in that job in August, 1977. He had then been given a period of time to demonstrate his ability to do the work, pursuant to Article 24.4 of the collective agreement. After eight days, the Company determined that the grievor would not be able to demonstrate his ability to perform the work within the period contemplated, and he was removed from the job. A grievance was filed on the matter, but it did not succeed, and was not progressed to the final step of the grievance procedure.

I quite agree with the general proposition advanced by the Union, that the mere fact of having been found to be unqualified at one time does not necessarily bind the employee in the future. Disqualification at one time does not mean disqualification forever. On the other hand, it must be shown, when there is a claim based on Article 24.1, that the employee is in fact able to perform the job in question. There is very little in the material before me to suggest that the grievor has the ability necessary to perform the work of Senior Clerk-Rates. It appears that in May, June and July 1977 he made some effort in his spare time at work and in his own time, to learn freight rates. It was, it seems, in recognition of these efforts that the Company gave him a period of time on the job in August, 1977, so that he might demonstrate his ability. That demonstration, as noted above, was not successful.

Following his disqualification from the job in August, 1977, the grievor was encouraged to continue to familiarize himself with freight rates. He did not do so. Had he done so to any substantial degree, then the Company would certainly have had to give serious consideration to the question of his "ability" when the matter next came up. His past disqualification would certainly not have meant that he was disqualified forever. The grievor, however, did nothing to improve his knowledge of the job or to acquire the skills which would give him the ability to perform it.

On the material before me, it simply cannot reasonably be said that the Company was in error when it determined that the grievor was not able to perform the job at the material times. There has been no violation of Article 24, and the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR