

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 707

Heard at Montreal, Tuesday, April 10th, 1979 Concerning

### CANADIAN PACIFIC LIMITED

and

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

### EX PARTE

#### **DISPUTE:**

The Brotherhood claims the Company violated Article 24.1 when it denied Mrs. N. Lidbetter the position of Senior Clerk advertised in bulletin No. 2 dated August 15, 1978

#### **EMPLOYEE'S STATEMENT OF ISSUE:**

Mrs. Lidbetter was the senior applicant for position of "Senior Clerk-Pension Calculations" but was denied the position because she did not have six months' experience on the position of "Clerk-Pension Calculations".

The Brotherhood claimed this was a violation of Article 24.1 and requested that Mrs. Lidbetter be awarded the position of "Senior Clerk-Pension Calculations" and be compensated for lost wages.

The Company denied the request.

#### **FOR THE EMPLOYEE:**

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

**GENERAL CHAIRMAN**

There appeared on behalf of the Company:

D. W. Flicker	– Counsel, Montreal
R. Granger	– Director, Pensions & Benefits, Montreal
M. Charland	– Manager, Pension Administration, Montreal
D. Smith	– Supervisor, Pension Calculations, Montreal
D. Cardi	– Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

F. Cote	– Counsel, Montreal
W. T. Swain	– General Chairman, Montreal
D. Herbatuk	– Vice General Chairman, Montreal
J. MacPherson	– Vice General Chairman, Montreal
J. Manchip	– Local Chairman, Montreal
N. Lidbetter	– Grievor

## 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.

The grievor was the senior applicant for the job in question. Indeed, she held, at the time of application, the highest-rated job of all the applicants. If she had sufficient "ability and merit" to perform the job, then she ought to have been appointed to it, and given the period contemplated by Article 24.4 to demonstrate her ability.

There is no doubt that the grievor is an experienced and good employee. There is no question as to her "merit". What is in issue is simply whether or not she had the ability to perform the job in question. The Company, which is to judge the matter in the first instance, made the determination that she did not. What must be decided now is whether that determination was wrong.

The Union contends that the grievor's application was rejected "for the sole reason that she did not have six months' experience on the position "Clerk Pension". It was indeed the Company's view that, in order to be able to perform the duties of the position of Senior Clerk-Pension Calculations, an employee should have experience in the lower-rated job of Clerk-Pension Calculations. It could not, I think, be put forward unilaterally as a necessary condition of appointment as a Senior Clerk-Pension Calculations, that an employee have at least six months' experience in the work of a Clerk-Pension Calculations. The Company would not be entitled unilaterally to establish "lines of progression" in this way. It is at least conceivable that a person could acquire sufficient ability in the necessary tasks in some other way, or with something less than six months' experience.

It is the Company's position that it did not award the grievor the job because it did not consider that she had the ability to perform it satisfactorily, and that in reaching that conclusion it took into consideration the fact that she had not worked for any substantial period of time as a Clerk-Pension Calculations.

At the time of her application the grievor was an experienced employee, and she held a higher-rated job than that of Clerk-Pension Calculations. She had not worked as a Clerk-Pension Calculations, although by reason of her other experience the Company considered that she would be able to perform (and to supervise and guide employees who were performing) a number of the tasks involved, occupying about twenty-five per cent of the time required.

There are a number of other aspects of the job - matters of complex calculations - of which the grievor had no experience and for which some considerable period of training would be required. It is very likely that the grievor had the fundamental capacity to learn this work, and to perform the job of Senior Clerk-Pension Calculations, but the material before me does not establish that she had the ability to perform substantially all the aspects of the job at the time of the posting, or to demonstrate such ability in a period of thirty days.

Thus, while I agree with the general principle enunciated by the Union, that the Company cannot unilaterally impose "lines of progression", nevertheless I cannot conclude that the grievor had the ability to perform the job in question at the material time. Accordingly, the grievance must be dismissed.

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