

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 915

Heard at Montreal, Tuesday, March 9, 1982

Concerning

CANADIAN NATIONAL RAILWAYS

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim by Mr. M. Pelletier for loss of wages as a result of not being awarded the position of a Group II Machine Operator.

JOINT STATEMENT OF ISSUE:

On March 30, 1980, Mr. Pelletier found that he could not work on his regularly assigned position as Machine Operator because of a back ailment.

Mr. Pelletier was still off work due to his back ailment at the time bulletin CO-11-80 was issued on November 4, 1980 advertising for a Group II Machine Operator for an approximate period of 4 months. Mr. Pelletier applied for this position on November 8, 1980. The position was to be effective December 15, 1980.

Prior to being allowed to return to work, Mr. Pelletier was required by the Company to have a medical examination at its Montreal Clinic. The Company Medical Department found that Mr. Pelletier's condition would not permit him to meet the physical demands required of a Group II Machine Operator.

The Union claims that Mr. Pelletier was medically fit and should have been awarded the Machine Operator position.

The Company declined the claim.

FOR THE EMPLOYEE:

(SGD.) PAUL A. LEGROS
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
DIRECTOR LABOUR RELATIONS

There appeared on behalf of the Company:

K. J. Knox – Manager Labour Relations, Montreal
R. Paquette – Labour Relations Assistant, Montreal
T. D. Ferens – System Labour Relations Officer, Montreal
L. C. Laporte – Regional Manager Work Equipment, Montreal

And on behalf of the Brotherhood:

P. A. Legros – System Federation General Chairman, Ottawa
R. Gaudreau – General Chairman, Montreal
F. L. Stoppler – Vice President, Ottawa

AWARD OF THE ARBITRATOR

The grievor had the general qualifications and seniority to be awarded the job in question. The job, in the classification of Group II Machine Operator, involved the operation and maintenance of a "Bert Pyke Snow Plow". This is a substantial piece of motorized equipment, operating on the track, and capable of being fitted with various attachments for clearing the track of snow. While it would be my view that the operation of such equipment would be hazardous for persons suffering from back problems, there would appear to be no doubt that the maintenance of the equipment, which certainly involves bending and lifting would involve substantial risks.

There is no doubt that the grievor suffers from low-back problems. He has been absent from work for prolonged periods on that account. His own doctor had recommended light duties and the Company's doctor, examining the grievor for the purpose of determining whether or not he would be able to perform the job in question without unreasonable risk, concluded that he would not. It was proper to conclude, on that ground, that the grievor was not physically able to perform the work. There was no suggestion that this conclusion was reached in an arbitrary way or by reason of any improper discrimination.

With respect to the medical reports, although the grievor presented a certificate from his general practitioner stating that he was fit to return to work, one must take into consideration the fact that this certificate closely followed another certificate that mentioned light work. The position in question here does not involve light work. The position in question was based on an evaluation of the grievor with a view to the position's requirements and this evaluation was neither arbitrary nor unduly discriminatory. Regarding all the evidence, one must conclude that the Company's decision was correct and the grievance is, therefore, dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR