

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 974

Heard at Montreal, Tuesday, September 14th, 1982

Concerning

CANADIAN PACIFIC TRANSPORT COMPANY LIMITED (CP TRANSPORT - WESTERN DIVISION)

and

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

DISPUTE:

Claim that the Company violated Article 13.6 when it did not call Mr. J. Petz for highway work.

JOINT STATEMENT OF ISSUE:

Mr. J. Petz, bulletined Warehouseman Driver (tractor), highway-qualified.

Mr. W. Jensen, Warehouseman Driver (tractor), was called in for work.

The Union claim 730 miles at pro rata in favour of Mr. J. Petz.

The Company declined claim.

FOR THE UNION:

(SGD.) R. WELCH
SYSTEM GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) N. W. FOSBERY
DIRECTOR LABOUR RELATIONS

There appeared on behalf of the Company:

N. W. Fosbery – Director Labour Relations, Willowdale

And on behalf of the Brotherhood:

R. Welch – System General Chairman, Vancouver

P. L. Rouillard – Vice General Chairman, Vancouver

AWARD OF THE ARBITRATOR

The grievor was the successful applicant on Bulletin No. 16, posted in August, 1978, for a Warehouseman Driver. The bulletin stipulated that the applicant be a fully qualified mileage rated driver, and specified that the work would include "driving duties as assigned". The grievor's appointment was properly posted in accordance with Article 13.6 of the Collective Agreement.

On Friday, November 20, 1981, the grievor completed his regular assignment for that week, his regular hours being 0800 – 1700, with Saturday and Sunday rest days. Later on November 20, extra work became available, requiring an employee to travel by bus to Winnipeg in order to return the next day to Regina, driving an empty stake truck. The grievor was qualified for such work, and it was within the scope of his bulletined assignment. It is said that had he been assigned to perform the extra work, he could not have refused it.

The extra work was, however, assigned to another employee, Mr. Jensen. Mr. Jensen also holds a bulletined position of Warehouseman Driver, having the same hours and days off as Mr. Petz. Mr. Jensen had bid on a job posted in June, 1979. That bulletin did not specify that the applicant be a fully qualified mileage rated driver. It did, however, specify "other driving duties as assigned". Mr. Jensen, like the grievor, was qualified to perform the extra work in question in this case.

Thus, two employees having the same classification and similar qualifications, had completed their full regular week's work when certain extra work became available. The Company assigned it to Mr. Jensen, who was the senior employee.

Article 13.6 of the Collective Agreement is as follows:

13.6 As soon as the successful applicant has been determined, the appointment shall be posted where the position or vacancy was bulletined. Bulletins announcing appointment shall show names of applicants. Where the successful applicant fails to qualify under the provisions of Article 14.3, the position will be awarded to the next senior qualified applicant.

That article was complied with in respect of each of the bulletined jobs referred to. Nothing in that article gives Mr. Petz greater rights over a senior qualified employee for work coming within the scope of the classification. Whether or not Mr. Jensen, because of the absence of reference to mileage rated driving in the bulletin on which he bid, would have been entitled to refuse the assignment, does not affect the propriety of its being assigned to him. Neither the bulletin nor Article 13.6 gave Mr. Petz any exclusive right, or preferential right, to the sort of work in question.

For the foregoing reasons the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR