CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 995

Heard at Montreal, Thursday, October 14th, 1982

Concerning

CANADIAN PACIFIC LIMITED

and

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

DISPUTE:

Claim by the Union that the senior applicant Mr. L. Muscat should have been awarded the position of Clerk (Maintenance of Way) advertised in bulletin No. 117 dated December 29, 1981.

JOINT STATEMENT OF ISSUE:

Bulletin No. 117 dated December 29, 1981 was awarded to an employee junior to Mr. Muscat. The Union contended that he had sufficient merit and ability to perform the duties of this assignment and should have been given the opportunity to demonstrate that ability in accordance with the provisions of Articles 24.1 and 24.4 of the collective agreement and requested that he be awarded bulletin No. 117 and be reimbursed for lost wages.

The Company denied the Union request.

FOR THE EMPLOYEE:	FOR THE COMPANY
(SGD.) W. T. SWAIN	(SGD.) L. A. CLARKE
GENERAL CHAIRMAN	FOR: GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company:

L. A. Clarke	– Supervisor Labour Relations, Toronto
D. Cardi	– Labour Relations Officer, Montreal
J. H. Morson	– Office Manager, Superintendent's Office, Toronto

And on behalf of the Brotherhood:

W. T. Swain	– General Chairman, Montreal
P. Vermette	– Vice General Chairman, Montreal
E. Bragan	– Local Chairperson, Toronto.

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.

Article 24.4 is as follows:

> **24.4** An employee assigned to a position by bulletin will receive a full explanation of the duties of the position and must demonstrate his ability to perform the work within a reasonable period of up to thirty calendar days, the length of time to be dependent upon the character of the work. Failing to demonstrate his ability to do the work within the period allowed, he shall be returned to his former position without loss of seniority, and the position shall be awarded to the next senior qualified employee who has applied.

In the instant case, the Officer of the Company in charge, being the Office Manager of the Superintendent's Office in Toronto, concluded that the grievor did not have the ability to do the job in question. This conclusion was based on the determination that the grievor did not meet the typing requirement which was listed in the job bulletin as one of the duties of the job.

There is no issue as to the *bona fides* of the Office Manager's decision. In my view, the grievor's having attained a typing proficiency of 10 words per minutes on a typing test shows clearly enough that he was not able to type to any reasonable standard of efficiency, and there is no reason to conclude that he would be able to demonstrate reasonable typing efficiencies within the period provided for in Article 24.4. That period, it may be noted, is not a training period, but is rather one in which employees selected on the basis of ability must demonstrate such ability.

It was contended for the Union that the typing requirement was unreasonable. On the material before me, however, it appears that for the particular position in question (whatever might be the case in other localities), there was a requirement of an average of one hour's typing per day. An employee who, by reason of his inability to type at a reasonable speed, must spend several hours a day at that task would, in all probability, be unable to accomplish the rest of his work. Failing that, it would be necessary to assign the work to others and thus, in effect, to change the job itself. The determination of what work is to be performed is for management to make. It has not been shown that the requirement that a Clerk, Maintenance of Way, be able to type was an unreasonable one.

It has not been shown that the grievor in fact had the ability to perform the job which was required to be done. The grievor was not, therefore, entitled to the job under the provisions of the Collective Agreement. What was said in **Cases 411, 600, 702** and **707** applies as well in this case, although some of those cases raise additional issues to that in question here.

For all of the foregoing reasons, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR