CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1005

Heard at Montreal, Wednesday, November 10th, 1982

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Employees D. R. Curtis, D. A. Kingsbury and C. F. Michaud, were employed as Maintainers II at the Equipment Repair Shop in Toronto. They were laid-off January 29, 1982, account having failed a test they were submitted to. The Union protested that the tests were not proper.

JOINT STATEMENT OF ISSUE:

The Union contends that: **1.)** The Company violated Section 2.2 of the Equipment Repair Memorandum in that the tests were improper. **2.)** The tests are for Maintainer I, as agreed April 1, 1971, and have to be jointly designed. **3.)** The employees laid off were senior to others as Maintainer II and not allowed to displace in accordance with Section 2.8 of the Memorandum. **4.)** The employees be paid the wages they could have earned since January 29, 1982, less what they actually earned.

The Company denies the Union's contention and denies payment.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) H. J. THIESSEN	(SGD.) L. A. CLARKE
SYSTEM FEDERATION GENERAL CHAIRMAN	FOR: GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

L. A. Clarke	– Supervisor, Labour Relations, Toronto
H. B. Butterworth	– Asst. Supervisor, Labour Relations, Toronto
G. Barabe	– Supervisor, Roadway Equipment Shop, West Toronto
I. J. Waddell	– Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen	– System Federation General Chairman, Ottawa
R. Wyrostok	– Federation General Chairman, Edmonton
E. J. Smith	– General Chairman, London
L. DiMassimo	– General Chairman, Montreal
F. L. Stoppler	– Vice-President, Ottawa

AWARD OF THE ARBITRATOR

At the time the grievors were laid off, they had not in fact been appointed as Maintainers II. They had applied on job bulletin No. 95, dated September 22, 1981, and by job bulletin No. 103, dated October 29, were recognized as being among the senior applicants for the job. The job bulletin noted that there were no qualified applicants.

The grievors were then assigned work and subjected to a test. By Article 2.2 of the Collective Agreement, before an employee is considered qualified, he may be required to submit to and pass a test of qualifications set up by the Company. The Company set up such a test. The grievors fell below the passing mark (55%), while all other employees exceeded it. The grievors were, accordingly, not considered to be qualified.

The test was set up by the Company and was based on but was not identical to a test set up for the classification of Grade I Maintainer. That test had been set up with the agreement of the Union. There is no general requirement that the Union agree to any particular test however, and the test in the instant case was not invalid simply because the Union had not agreed to it. The test appears to have been administered fairly, and there is no evidence of improper discrimination as between employees. The mere fact that the test was administered to different employees on different days does not support the conclusion that it was unfair.

Had the grievors in fact been qualified as Group I Maintainers, then the Union's position would be correct: it would not then be open to the Company to lay off employees except on the basis of seniority. In the instant case, however, the grievors were not Group I Maintainers and their layoff was not improper, as far as the issue raised in this case is concerned.

For the foregoing reasons, the grievance is dismissed.

(sgd.) J. F. W. WEATHERILL
ARBITRATOR.