

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1019

Heard at Montreal, Tuesday, December 14, 1982

Concerning

CANADIAN PACIFIC EXPRESS LIMITED

and

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

DISPUTE:

The refusal by the Company to allow employee R. Morin to exercise his seniority to the position of Assistant Mechanic at Montreal, Quebec.

JOINT STATEMENT OF ISSUE:

Employee R. Morin's position of Garageman was abolished February 8, 1982. Under the terms of the Collective Agreement he applied to displace junior employee E. Schneider, Assistant Mechanic.

Employee R. Morin was denied the right to displace junior employee E. Schneider due to "as stated by the Company" not qualified for the position.

The Brotherhood requested employee Morin be given the opportunity and right to the position.

The Company denied the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) J. J. BOYCE
GENERAL CHAIRMAN,

FOR THE COMPANY:

(SGD.) D. R. SMITH
DIRECTOR, INDUSTRIAL RELATIONS & ADMINISTRATION

There appeared on behalf of the Company:

D. R. Smith – Director, Labour Relations & Administration, Toronto
B. D. Neill – Manager, Labour Relations, Toronto
P. E. Timpson – Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

J. J. Boyce – General Chairman, System Board of Adjustment No. 517, Toronto
G. Moore – Vice-General Chairman, Moose Jaw.

AWARD OF THE ARBITRATOR

The grievor, whose position as Garageman was abolished, sought to displace a junior employee working as an Assistant Mechanic. He was not allowed to do so, and the issue is whether or not that constituted a violation of the Collective Agreement. It may be noted that the grievor was given employment as a Warehouseman, and so suffered no loss of regular earnings. The issue remains, however, whether the grievor was entitled to displace the Assistant Mechanic. By Article 7.3.1 of the Collective Agreement, such entitlement depends on whether or not the grievor was "qualified" to perform the duties of that position.

Article 7.3 deals with reduction in staff, and sets out certain displacement rights. Those rights are not precisely identical to those of promotion, dealt with in Article 7.1. There is, for example, no provision for a period of time in which an employee, determined by the Company to be qualified, may demonstrate his or her ability to perform the work. On the other hand, an employee is entitled to exercise displacement rights if he or she is "qualified" and in such cases the provisions of Article 7.1 that "The Officer of the Company in charge shall be the judge" may not apply.

However that may be, the question in the instant case is whether or not the grievor was "qualified" as an Assistant Mechanic at the material times. It would appear that he had the necessary driving licence, and that he had some knowledge of motor vehicles. He did not have the "basic tools". He had (so the Company was later advised) some experience in a service station which might qualify him to perform certain "basic repairs". His duties as a Garageman were performed in the truck compound, and included fuelling vehicles and checking and adding oil. He did not, in that work, perform any minor repairs nor assist tradesmen.

While it may well be that the grievor could, with relatively short experience, have become qualified as an Assistant Mechanic, neither his work as a Garageman nor his employment history as known to the Company at the time could be said to establish that he was then, without further training, qualified to carry out the tasks of an Assistant Mechanic. That was what had to be established if the grievor was to displace the junior employee then working in the job, and it was not established.

The Company was under an obligation to give the grievor "all possible opportunities" to improve himself by learning as much as possible about higher positions. Any complaints the grievor may have had in that regard, however, ought to have been made when such opportunities arose. The requirement of being qualified for a job one seeks is not displaced by a failure to have become qualified at some earlier time.

For the foregoing reasons, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR