

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1140

Heard at Montreal, Wednesday, November 2nd, 1983

Concerning

### CANADIAN PACIFIC EXPRESS LIMITED

and

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

#### DISPUTE:

The right of Warehouse employee Gerard Duval of Montreal, Quebec, to displace a junior employee holding a position of warehouseman.

#### JOINT STATEMENT OF ISSUE:

May 12, 1982, the position of warehouseman at Avon Limited, held by employee G. Duval was abolished.

In accordance with article 7.3.1 employee Duval endeavoured to displace a junior employee holding a position of warehouseman at General Motors, Pointe Claire, Quebec.

The Company would not allow warehouseman Duval to displace this junior warehouseman.

#### **FOR THE BROTHERHOOD:**

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

#### **FOR THE COMPANY:**

**(SGD.) D. R. SMITH**  
DIRECTOR, INDUSTRIAL RELATIONS

There appeared on behalf of the Company:

D. R. Smith – Director, Industrial Relations, Personnel & Administration, Toronto  
B. D. Neill – Manager, Labour Relations, Toronto  
J. W. McColgan – Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

J. J. Boyce – General Chairman, Toronto  
J. Crabb – General Secretary-Treasurer, Toronto

## AWARD OF THE ARBITRATOR

On May 12, 1982, the position of Warehouseman at Avon Limited held by the grievor, G. Duval, was abolished. Subsequent to this the grievor applied to exercise his seniority rights to displace a less senior employee, M. Falardeau, holding the position of Warehouseman at General Motors, Pointe Claire, Quebec. The Company declined the grievor the right to displace the junior warehouseman at General Motors due to the fact that the grievor had never performed the duties nor had been trained in the tasks required of a warehouseman at General Motors. Accordingly the Company concluded that the grievor was not qualified to bump into the desired position. The relevant provision of the collective agreement reads as follows:

Article 7.3.1      An employee whose position is abolished or who is displaced from his position must displace, within 3 working days, a full-time junior employee in his local seniority group for whose position he is qualified. An employee who fails to comply with said time limit shall not have the right to return to service by displacing a junior employee.

The grievor is an employee with 33 years service with the Company. Since 1949 the grievor has occupied a number of positions as a terminal warehouseman, dock warehouseman, supervisor of warehousemen at outside locations such as Avon Limited. The grievor occupied the warehouseman position at Avon Limited immediately prior to its being abolished on May 12, 1982.

The purported reason for the Company's rejection of the grievor's application pertained to his alleged unsuitability to perform warehouseman's duties at General Motors having regard to the peculiar system in place at those premises. It is suggested that the grievor would require a lengthy period of training before he could be considered "useful" in the discharge of those duties. In support of its position, the Company submitted a letter dated February 6, 1980, from representatives of General Motors expressing its concern with respect to the adverse effect that changes in the Company's warehouse personnel have had on the operations of General Motors:

We wish to remind you once again, that any local changes of your people have a direct negative effect to our operations. Our prime objective is service, and this is affected when changes are made.

We understand that periodical changes will occur due to uncontrollable circumstances, however, recently you have been changing people which resulted in our standard of service being affected.

Would you please review this request in not changing your people. If you require any assistance to rectify this problem, do not hesitate to contact us.

No evidence was adduced to demonstrate why an employee, with the grievor's long experience as a warehouseman in the Company's employ, would encounter difficulty in accommodating himself in the discharge of his duties to the peculiar operation at General Motors. In my view a senior employee, in the grievor's situation, is clearly entitled, having regard to his established qualification, to "bump" into a like position held, in the instant circumstance, by a less senior employee. It may very well be that the peculiar warehousing system in effect at General Motors may require some time for the grievor "to familiarize" himself with the specific duties he will be required to discharge. This is no reason, however, to deprive him of the opportunity to exercise displacement privileges that he has accrued as a long standing employee. Nor has the Employer been able to raise any other argument that would cause me to question the grievor's qualifications. In short, the inconvenience that might be encountered by the Company's customer is no excuse for overriding the entitlement of employees to the exercise of their seniority privileges under the collective agreement.

For all the foregoing reasons, the grievance ought to succeed. The Employer is directed to assign the grievor to the position of Warehouseman at General Motors, Pointe Claire, Quebec, and to compensate him for any loss in wages or other benefits incurred.

The Board shall remain seized.

**(signed) DAVID H. KATES**  
**ARBITRATOR**