

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1195

Heard at Montreal, Thursday, February 16, 1984

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

### DISPUTE:

Mr. G. D. Lacey, Pipefitter, attended the B&B Foreman Training program from March 7 to March 18, 1983, inclusive. Mr. Lacey was paid at the 3rd year Pipefitter rate of pay during training. The Union claims he should have been paid the B&B foreman's wage rate.

### JOINT STATEMENT OF ISSUE:

The Union contends that: (1.) Section 27.20 to 27.36 of Wage Agreement 41 and the heading relates to training of the classification of B&B Foremen. (2.) Section 27.32 was violated when he was not paid the B&B foreman rate of pay. (3.) G. D. Lacey be paid the difference in rate from 3rd year Pipefitter to B&B foreman for the period March 7 to March 18, 1983, inclusive.

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

FOR THE BROTHERHOOD: FOR THE COMPANY:

(SGD.) H. J. THIESSEN (SGD.) L. A. HILL

System Federation General Chairman General Manager, Operation and Maintenance

There appeared on behalf of the Company:

F. R. Shreenan – Supervisor Labour Relations, Vancouver

D. N. McFarlane – Assistant Supervisor Labour Relations, Vancouver

P. E. Timpson – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen – System Federation General Chairman, Ottawa

L. DiMassimo – General Chairman, Montreal

R. Gaudreau – Vice-President, Ottawa

E. J. Smith – General Chairman, London

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### AWARD OF THE ARBITRATOR

The simple issue raised in this case pertains to whether an employee who has not been granted seniority as a B&B foreman is assigned (or tacitly promoted) to B&B foreman status while he is taking a B&B Foreman's Training Course on direction of the Employer. Should he thereby be paid at the B&B foreman's rate of pay during the period of the training course?

The Trade Union submits that since under article 27.20 of the collective agreement training is restricted to two categories of B&B foremen then the inference must be drawn that the grievor while assigned to do training at the direction of the Employer must be deemed to have acquired seniority as a B&B foreman. Article 27.20 reads as follows:

Training for B&B Foreman

Employees taking training under the Bridge and Building Foreman Training Program shall, for the purpose of this agreement, be designated as follows:

(a) regular employee: an employee holding seniority as a Bridge and Building Foreman (B&B foreman) on or prior to January 15, 1983.

(b) Trainee: an employee establishing seniority as a B&B foreman after January 15, 1983. Such employee shall be regarded as a trainee until he has taken training and successfully completed the qualifying tests.

There is a logical fallacy in the premise that underlies the Trade Union's submission. That is to say, it does not necessarily follow that because article 27.20 of the collective agreement defines two categories of a B&B foreman who may take training it necessarily follows that only B&B Foremen are eligible to take training. As the Trade Union explained in its submissions before me the purpose of article 27.20 is to protect the job security of B&B Foremen, as of January 15, 1983, who are required to take training and who might fail to complete the qualifying tests. In that event, their status as B&B Foremen is protected. On the other hand, those B&B Foremen whose seniority as foremen was acquired after January 15, 1983, their job security may very well be in jeopardy should they fail to complete the qualifying tests.

I do not interpret the objective of article 27.20 in providing job security to long service B&B foremen (as opposed to B&B foremen who have more recently acquired seniority) who are required to take training as excluding regular employees access to training at the Company's request in order to qualify for an assignment or promotion to the B&B foreman position. It does not logically follow that those employees have thereby acquired seniority as B&B foremen.

Had the grievor actually been assigned B&B foreman's duties and had subsequently been required by the Employer to take training then article 26.9 would have governed his rate of pay. Article 26.9 reads "Employees temporarily assigned to higher rated positions shall receive higher rates in accordance with Clauses 26.1 and 27.5, while occupying such positions."

Since the grievor never occupied the position of B&B foreman the Employer correctly paid him his regular Pipefitter's wage during the period he took training in order to qualify at some future date as a B&B foreman. Article 27.32 reads in part:

While training an employee will be paid at the rate of pay he would have received had he not been in training ...

For all the foregoing reasons, the grievance is denied.

**(signed) DAVID H. KATES**

**ARBITRATOR**