

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1345

Heard at Montreal, Tuesday, April 9, 1985

Concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION

DISPUTE:

Grievance of Trainman/Yardman Yves Gaudreault account his removal from the Locomotive Engineers Training Program.

JOINT STATEMENT OF ISSUE:

Trainman/Yardman Yves Gaudreault was notified by Local Company Officers, Montreal, that he was being removed from the Locomotive Engineers Training Program after having received 87.1% on the UCOR Rules Examinations.

The Union appealed the removal of Mr. Gaudreault from the Locomotive Engineers Training Program and requested that the Company reinstate him back into the course as soon as possible.

It is the Company's position that the required passing mark on the Eastern Region is 90% and for this reason the Union's request is respectfully denied.

FOR THE UNION:

(SGD.) B. MARCOLINI
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) G. A. SWANSON
GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

P. A. Pender	– Supervisor, Labour Relations, Toronto
J. T. Sparrow	– Manager, Labour Relations, Montreal
R. J. Pelland	– Labour Relations Officer, Montreal
F. Beaudoin	– Manager, Rules, Montreal

And on behalf of the Union:

B. Marcolini	– General Chairman, Toronto
A. Verner	– Vice General Chairman, Montreal
M. Hone	– Research Director, Ottawa
Y. Gaudreault	– Grievor

AWARD OF THE ARBITRATOR

The company's established policy is to require Locomotive Engineering Trainees to try a written examination (multiple choice) with respect to their knowledge of the UCOR Rules after a two week intensive course. If the Trainee fails to achieve a 90% grade after trying that examination the company then will withdraw the employee from the Locomotive Engineer's Training Programme. The company relies upon Section 6 of the Memorandum of Agreement governing the Locomotive Engineer's Training Programme to justify its actions in eliminating the trainee from further training:

6. A candidate may be dropped from the training program at any time during the training period **if in the judgement of the Company he does not demonstrate the fitness and ability required to serve in the capacity of a Locomotive Engineer.** If a candidate is dropped from the training program by the Company, he shall be advised the reason therefore, in writing should he so request. (emphasis added)

I am satisfied that the appropriate standard to be followed in determining whether the company has violated Section 6 is correctly outlined in the company's brief. That is to say, the onus rests on the trade union to establish that the following criteria were not satisfied:

... the judgement of the company must be honest, and unbiased, and not actuated by any malice or ill will directed at the particular employee and, second, the managerial decision must be reasonable, one which a reasonable employer could have reached in the light of the facts available. The underlying purpose of this interpretation is to prevent the arbitration board taking over the function of management, a position which it is said they are manifestly incapable of filling.

In the grievor's particular case the evidence disclosed that at the outset of the training programme all candidates were advised of the company's requirement of achieving a 90% grade in the examination pertaining to the UCOR Rules. Moreover, this standard was applied equally and non-discriminatorily to each of the candidates. Indeed, the trade union acknowledged that any variance from that standard was corrected by the company upon any discrepancy being brought by the trade union to the employer's attention. In this regard, the trade union makes no allegation that the company was dishonest or biased in its administration of the test results.

Basically, the trade union argued that the standard of achieving a 90% grade on the UCOR examination was unreasonable. Indeed, it is suggested that the grievor's attainment of 87.1% in the examination result should have sufficed for purposes of allowing his continuation in the training programme. For example, it was argued that 85% should have been an appropriate grade for continuation. That is apparently the level of achievement required by the company with respect to the Periodic Rules Examination imposed on experienced Locomotive Engineers in the company's employ pursuant to the dictates of the Canadian Transport Commission. It is suggested, despite any differences in the examination format, that the same standard ought to apply to the uninitiated trainee. Moreover, it was also noted that the grievor, having regard to the Class 'A' level of achievement he had hitherto exhibited in his present capacity as a Conductor, should have been extended the benefit of the doubt with respect to his suitability and ability to become a Locomotive Engineer.

The problem confronting the trade union in its efforts on the grievor's behalf pertains to the parties' agreement, pursuant to Section 6 of the Memorandum of Agreement, to shield the company's judgement from review at arbitration. Although I might very well agree with the trade union that an 85% grade might very well entitle a candidate to be accredited with sufficient knowledge of the UCOR Rules to allow his progression in the training course, unless the trade union can demonstrate that the standard that was established in accordance with the company's judgement was adopted for some untoward purpose then I have no power to review the company's decision. In this regard, the trade union did not mitigate the importance of the company's concern that candidates have a thorough knowledge of the UCOR Rules. Nor was it suggested that attainment of the 90% grade was elusive or problematic on the part of a candidate after he has completed the two week training course. Indeed, the company's statistics indicated that since 1971 the achievement of a 90% grade was attained by the vast majority of employees who tried the examination. In other words, the trade union has asked me to substitute, without appropriate cause, the standard that the company has applied to all trainees because the grievor has fallen short of that standard by a narrow margin.

While I might share the trade union's concern with respect to the perceived inequity visited upon the grievor in the light of his experience as a Conductor, the truth of the matter is that the line must be drawn somewhere. The company, in its judgement, has drawn the line at 90%. And, so long as that standard meets the test recited earlier in this decision with respect to fairness and reasonableness I have no grounds for substituting my own judgement (or indeed the trade union's judgement) for the entrenched company prerogative that is recognized by the trade union under Section 6. Indeed, given the importance of the UCOR Rules in the discharge of a Locomotive Engineer's duties I cannot be seen without cause to be criticizing the maintenance of a standard that is designed to ensure the safe and competent operation of the company's railway equipment.

For all the foregoing reasons the grievance is dismissed.

(signed) DAVID H. KATES
ARBITRATOR