

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1353

Heard at Montreal, Wednesday, May 15, 1985

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. D.S. Sarty was laid off from his position as a Plumber, Vancouver (Vancouver) Division seniority territory on March 9, 1984. Mr. Sarty attempted to displace Mr. J.S. Murray from his position as Bridgetender at the Pitt River Bridge, Vancouver Division. The Company did not allow Mr. Sarty to displace Mr. Murray.

JOINT STATEMENT OF ISSUE:

The Union contends that: **1.)** Mr. Sarty had seniority as Bridgetender by virtue of Section 14.10, Wage Agreement 41, from January 5, 1981. Mr. J.S. Murray had seniority from November 27, 1982. **2.)** Mr. Sarty should have been allowed to displace as Bridgetender, being senior and qualified. **3.)** Mr. Sarty be allowed to displace a junior Bridgetender, Mr. J.S. Murray, be accorded a seniority date as Bridgetender from January 5, 1981, Section 14.10, W.A. 41, and be paid compensation as such from April 23, 1984 and onward, until placed as Bridgetender at Pitt River Bridge.

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

FOR THE BROTHERHOOD:

(SGD.) H. J. THIESSEN
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) L. A. HILL
GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

F. R. Shreenan – Supervisor Labour Relations, Vancouver
R. A. Colquhoun – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen – System Federation General Chairman, Ottawa
R. Y. Gaudreau – Vice-President, Ottawa
L. M. DiMassimo – Federation General Chairman, Montreal
M. L. McInnes – General Chairman, Lucky Lake, Sask.
V. Dolynchuk – General Chairman, Edmonton

AWARD OF THE ARBITRATOR

The grievor, Mr. D.S. Sarty, upon being laid off from his regular position as “a plumber” attempted to displace the less senior incumbent occupying the position of Bridgetender. The trade union asserted that the grievor, because of his qualifications, should have been permitted by the company “to bump into” the Bridgetender’s position. The company insisted that because the grievor had not taken the necessary two week training course, was not qualified for the position. Accordingly, the grievor was not eligible to displace the incumbent from the Bridgetender’s position.

Although the grievor may appear to have exhibited the qualifications for the Bridgetender’s position, I have been satisfied that the company was still warranted in exercising its reluctance to assign him the position because he had not taken the required training courses. It was not suggested that the training courses were an unreasonable restriction or were otherwise designed to deprive a qualified employee of his rights under the collective agreement. And, it is for that reason I am compelled to conclude that the grievor, despite the entitlements he may perceive he holds pursuant to Article 14.10 of the collective agreement, was not eligible to exercise displacement privileges with respect to the Bridgetender’s job. It is clear that Article 14.10 imposes the requirement that an employee in a higher classification in order to hold seniority in positions of a lower classification must exhibit “he is qualified to work” in those lower rated positions. And, because the grievor has not taken the required training period he has not shown that he is qualified for the Bridgetender’s work.

In resolving this case, I have purposely refrained from discussing the impact of Articles 13.4 and 13.6 in reaching my conclusions. Nonetheless, the question that inevitably will have to be addressed at a future date is whether, assuming a grievor’s qualifications with respect to his exercising “bumping” privileges to a position occupied by a less senior incumbent, he foregoes that right because his name has not been placed, for whatever the reason, on the requisite seniority list. It is anticipated that the parties will deal with that issue in due course.

For all the foregoing reasons the instant grievance is denied.

(signed) DAVID H. KATES
ARBITRATOR