

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1595

Heard at Montreal, Wednesday, December 10, 1986

Concerning

### CANADIAN PACIFIC LIMITED

and

### BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

#### **DISPUTE:**

On Bulletin No. 19, dated December 2, 1985, Mr. K. D. Lawrence was awarded a Track Maintenance Foreman's position on a temporary basis at Streetsville. He was also awarded a Leading Track Maintainer's position at Streetsville on a permanent basis, by the same bulletin.

#### **JOINT STATEMENT OF ISSUE:**

The Union contends that: (1.) The Company violated section 14.9, wage agreement 41 by awarding Mr. Lawrence a position in two different classifications. (2.) The award of Leading Track Maintainer at Section 1, Streetsville be removed from Mr. Lawrence and awarded to the next senior applicant to this position. (3.) Until this correction is made, Mr. L. P. Lewis be compensated for the difference in wages he received to that of Leading Track Maintainer from December 2, 1985 and onward, or compensation to the senior applicant.

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

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

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

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

**(SGD.) F. DIXON**  
FOR: GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

R. A. Colquhoun – Labour Relations Officer, Montreal  
M. K. Couse – Assistant Supervisor Labour Relations, Toronto

And on behalf of the Brotherhood:

H. J. Thiessen – System Federation General Chairman, Ottawa  
L. M. DiMassimo – Federation General Chairman, Montreal

## **AWARD OF THE ARBITRATOR**

The Union maintains that there has been a violation of section 14.9 of wage agreement 41. That provision is as follows:

14.9 An employee who obtains a position by bid in a lower classification when work is available in the higher classification shall forfeit his seniority in such higher classification.

It is not disputed that at the time of Bulletin No. 19 Mr. Lawrence occupied a temporary Leading Track Maintainer's position at Orangeville. He then successfully bid to the higher rated temporary position of Track Maintenance Foreman at Streetsville, with the understanding that he would later assume the position of permanent Leading Track Maintainer at the same location.

In this proceeding the burden of proof is upon the Union to establish that the facts disclose a violation of article 14.9 of the collective agreement. On the material before the Arbitrator it is clear that Mr. Lawrence obtained a position by bid in a higher classification when work was available in the lower classification. That is not the circumstance addressed in article 14.9, which is restricted to the reverse situation. On the facts as presented the Arbitrator cannot find a violation of article 14.9 of the collective agreement and the grievance must be dismissed.

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**