

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1642

Heard at Montreal, Thursday, April 16, 1987

Concerning

### CANADIAN PACIFIC LIMITED

and

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

#### DISPUTE:

The Union contends the Company violated articles 24.1 and 24.4 of the collective agreement, by not awarding Mr. K. McKinnon the position of Clerk-Typist, position number 118.

#### JOINT STATEMENT OF ISSUE:

Mr. McKinnon bid for the position of Clerk-Typist (Position 118) advertised as a temporary vacancy by Bulletin No. 45 on March 10, 1986 and again as a temporary vacancy by Bulletin No. 62 on July 8, 1986.

The Company contends Mr. McKinnon took the standard typing test in both instances and was denied the position on the basis of the results. The Company further contends that the tests showed he did not have sufficient ability in either instance.

The Union contends Mr. McKinnon had sufficient ability and merit to have been awarded the position in both instances, in accordance with the collective agreements.

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

**(SGD.) J. MANCHIP**

**FOR: SYSTEM GENERAL CHAIRMAN**

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

**(SGD.) BOOTH**

**FOR: ASSISTANT COMPTROLLER, EXPENSES**

There appeared on behalf of the Company:

R. Caza – Chief Accountant, Chief Accountant's Officer, Toronto  
H. E. Carter – Manager, Expenditure Accounting, Montreal  
P. E. Timpson – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

J. Manchip – Vice-General Chairman, Toronto  
D. J. Bujold – General Chairman, Montreal

## AWARD OF THE ARBITRATOR

The grievor was denied two temporary promotions to vacancies in the position of Clerk-Typist. While he was later successful in bidding to that position, the Company maintains that on the first of two tries he did not display the requisite standard of typing ability, having regard to his speed and accuracy. The Union argues that he should have been provided an opportunity to display his ability within the 30 day period contemplated in article 24 of the collective agreement. That article provides, in part, as follows:

24.1 Promotion shall be based on ability, merit and seniority; ability and merit being sufficient, seniority shall prevail. The officer of the Company in charge shall be the judge, subject to appeal, such appeal to be made in writing within fourteen calendar days of the appointment.

...

24.4 An employee assigned to a position by bulletin will receive a full explanation of the duties of the position and must demonstrate his ability to perform the work within a reasonable period of up to thirty calendar days, the length of time to be dependent upon the character of the work. Failing to demonstrate his ability to do the work within the period allowed, he shall be returned to his former position without loss of seniority, and the position shall be awarded to the next senior qualified employee who has applied.

In the Arbitrator's view, the foregoing provision plainly contemplates that the person who is placed in a position with the opportunity to demonstrate his or her ability to perform the work must, nevertheless, demonstrate some standard of qualification before that opportunity is given. That is plainly reflected in the final sentence of article 24.4 which contemplates the opportunity being given to the next senior qualified employee' in the event that the first successful applicant does not demonstrate the requisite ability.

In the instant case the positions in question were temporary in nature, one of them being for only 14 days. In these circumstances it is questionable that the parties would have intended the 30 day trial period to operate in favour of an applicant of doubtful qualification.

In the Arbitrator's view the instant case is indistinguishable from **CROA 995**, decided between the parties to the instant dispute. In that case the grievor was denied a bulletined temporary clerical position because of a deficiency in his typing ability. In dismissing the grievance the Arbitrator commented,

... there is no reason to conclude that he would be able to demonstrate reasonable typing efficiencies within the period provided for in article 24.4. That period, it may be noted, is not a training period, but is rather one in which employees selected on the basis of ability must demonstrate such ability.

The determination of what work is to be performed is for management to make. It has not been shown that the requirement that a Clerk, Maintenance of Way, be able to type was an unreasonable one. It has not been shown that the grievor in fact had the ability to perform the job which was required to be done.

The Arbitrator is satisfied that in the instant case the Company was entitled to satisfy itself that the grievor was reasonably capable of carrying out the typing duties which constituted 75% of the job content of the position in question. Given the temporary nature of the job, it was not unreasonable for the Company to expect that qualification to be immediate. The test administered by the Company was a fair and reasonable method of assessing the grievor's abilities and the standard required was not, in the Arbitrator's view, out of keeping with the duties and responsibilities of the job. The grievor did not demonstrate the requisite level of ability and, in the circumstances, the Company was entitled to award the position to another applicant who did. For these reasons the grievance must be dismissed.

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