CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1965

Heard at Montreal, Tuesday, 14 November 1989

Concerning

CANADIAN PACIFIC LIMITED

And

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

The appointment of an employee junior to Mr. P. Leclerc to the position of Crane Operator.

JOINT STATEMENT OF ISSUE:

After receiving bids for the bulletined position of Crane Operator, The Company appointed Mr. J. Robbins, an employee junior to the grievor, to the position.

The Union contends that Mr. Leclerc, being the senior employee, should have been appointed to the position of Crane Operator in accordance with Articles 24.1 and 24.4 of the Collective Agreement. The Union further contends that the prerequisite for this position was not mutually agreed to and claims lost wages and benefits.

The Company maintains that the awarding of the position of Crane Operator in this instance was properly effected under the terms contained in Article 24 of the Collective Agreement, and declines the Union's claim.

FOR THE UNION:	FOR THE COMPANY:
(SGD) D. J. KENT	(SGD) L. ARMANO
FOR GENERAL CHAIRMAN	DIRECTOR OF MATERIALS

There appeared on behalf of the Company:

C. Graham	– Supervisor, Training & Accident Prevention, Montreal
D. J. Babson	– Assistant Manager of Materials, Winnipeg
P. E. Timpson	– Labour Relations Officer, Montreal

And on behalf of the Union:

D. Deveau	– General Chairman, Calgary
J. Covey	– General Secretary/Treasurer, Vice-General Chairman, Medicine Hat
C. Pinard	– Vice-General Chairman, Montreal
J. Germain	– General Chairman, Montreal

AWARD OF THE ARBITRATOR

The Arbitrator is satisfied that in the instant case the Company was within its rights in establishing a minimum of forty hours' experience in operating the twenty-ton Omega crane. While it may be that it could, at its discretion, utilize Article 24.4 to allow a portion of those hours to be derived from the orientation period falling after the assignment, it is clearly under no obligation to do so. The issue of skill, efficiency and safety in the operation of a piece of heavy equipment is one of obvious concern to the Company. I can find nothing in the instant case to suggest that it made its determination other than on legitimate grounds, without the taint of arbitrariness, discrimination or bad faith.

No violation of the Collective Agreement being disclosed, the grievance must be dismissed.

November 17, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR