

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2125

Heard at Montreal, Wednesday, 13 March 1991

concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Machine Operator positions at West Toronto Work Equipment Shop not being bulletined.

BROTHERHOOD'S STATEMENT OF ISSUE:

The Machine Operator positions for an Overhead Crane and a Speedswing at the West Toronto Work Equipment Shop are not being bulletined, and are being operated by employees employed at the West Toronto Shop.

The Union contends that: **1.)** the Company violated Sections 14.1 and 14.2 by not bulletining the Machine Operator positions. **2.)** The Company violated Section 4.3 of the Machine Operators Memorandum of Agreement by not negotiating with the Union to establish into what group of machines the Overhead Crane would fall, prior to its operation.

The Union requests that: **1.)** The positions of Overhead Crane Operator and Speedswing Operator be bulletined in accordance with Section 14.1 and 14.2. **2.)** The two senior qualified employees be compensated for all lost wages and expenses incurred as a result of not bulletining the positions.

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

FOR THE BROTHERHOOD:

(SGD.) L. M. DIMASSIMO

SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

R. P. Egan – Assistant Supervisor, Labour Relations, Toronto
D. T. Cooke – Labour Relations Officer, Montreal
H. B. Butterworth – Assistant Supervisor, Labour Relations, Toronto

And on behalf of the Brotherhood:

L. DiMassimo – System Federation General Chairman, Ottawa
J. J. Kruk – General Chairman, Eastern Region, Sudbury

AWARD OF THE ARBITRATOR

The evidence discloses that for over twenty years the overhead crane at the West Toronto Work Equipment Shop has been operated by employees assigned to the Work Equipment Repair Shop under the classification of

Maintainer. The Collective Agreement contains a Memorandum of Agreement between the parties respecting the classifications and wages of employees in the maintenance of way department assigned to the Equipment Repair Shop. It makes no provision for a classification of crane operator. In that regard it is to be distinguished from the Memorandum of Agreement governing employees in Reclamation Plants, which specifically provides for specific classes of machines, including an overhead crane, to which a Group I Machine Operator's rate of pay applies. Similarly, a separate Memorandum of Agreement governing the rates of pay and working conditions of machine operators employed in the field in maintenance of way service establishes a Group I rate of pay for a number of crane operators, including the operator of the speedswing.

In the Arbitrator's view the Collective Agreement so construed reflects the understanding of the parties that, for reasons which they must best appreciate, different classes of service will attract different rates of pay for the operation of various pieces of equipment. Insofar as equipment repair shops are concerned, they have made no specific provision for the assignment of special classifications or rates of pay for persons assigned to the overhead crane, or to the speedswing, notwithstanding that these have been in use at the West Toronto Work Equipment Shop for some twenty years and seven years respectively. In the Arbitrator's view the structure of the memoranda of agreement governing the various classes of service, and the absence of any reference to crane operation within the memorandum governing the Work Equipment Repair Shop, discloses the intention of the parties that the operation of cranes, whether it be the overhead crane or a mobile crane such as the speedswing, is to be assigned to employees within the classifications contained within that memorandum. There is no obligation upon the Company to bulletin machine operator positions in that circumstance. Should the Brotherhood wish to see change in that regard it must become a matter for negotiation at the bargaining table.

March 15, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR