

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2198

Heard at Montreal, Tuesday 12 November 1991

concerning

**CANADIAN PACIFIC LIMITED**

and

**TRANSPORTATION COMMUNICATIONS UNION**

### **DISPUTE:**

Claim for Storeman T.J. Sandulak, Thunder Bay, Ontario for payment of wages for March 1 and March 2, 1990.

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

On January 30, 1990, Mr. Sandulak was advised by letter from Superintendent of Investigation (Pacific Region) that his position of Security Guard in Winnipeg was to be abolished effective March 1, 1990.

On February 27, 1990, Mr. Sandulak, through his superior, Regional Inspector W. Turchyn, advised Materials (Mr. D.J. Babson, Assistant Manager of Materials, Weston) by computerized mail, that Mr. Sandulak wished to displace Mr. G. Landry, Line Storeman, Thunder Bay.

On February 27, 1990, Materials acknowledged Mr. Sandulak's intention to displace Mr. Landry and advised Mr. Sandulak, through Mr. Turchyn, that he was qualified to displace and was asked to advise when he would relocate and commence work in Thunder Bay.

On March 1, 1990, a temporary position of Clerk/Typist became available in Weston Store, and an employee junior to Mr. Sandulak was called to work the vacancy.

The Employee progressed a Step One grievance for two days' pay, those being March 1 and March 2, 1990, and his request was denied. The Union progressed Mr. Sandulak's grievance through Steps 2 and 3 of the grievance procedure.

The Company declined the grievance.

### **FOR THE UNION:**

**(SGD.) D. DEVEAU**  
SYSTEM GENERAL CHAIRMAN

### **FOR THE COMPANY:**

**(SGD.) L. ARMANO**  
FOR: DIRECTOR OF MATERIALS

There appeared on behalf of the Company:

C. Graham – Supervisor, Training and Accident Prevention, Materials, Montreal  
D. J. David – Labour Relations Officer, Montreal

And on behalf of the Union:

D. Deveau – Executive Vice-President, Calgary  
J. Manchip – Executive Vice-President, Montreal  
C. Pinard – Division Vice-president, Montreal

## **AWARD OF THE ARBITRATOR**

The Union's claim turns on the application of article 25.2 of the collective agreement, which provides, in part, as follows:

**25.2** ...

The intent of this Clause is that an employee establish himself on a permanent position. After so establishing himself such employee may exercise his seniority to fill a temporary position in compliance with the collective agreement prior to filling the permanent position on which established. ...

The material before the Arbitrator establishes that on February 27, 1990 the grievor notified the Company that he desired to displace Line Storeman Landry in Thunder Bay. A memo dated February 27, 1990 from the Regional Inspector, Mr. W. Turchyn, addressed to Mr. D.J. Babson advised that Mr. Sandulak wished to displace Mr. Landry, as a result of his own displacement, effective March 1, 1990. Further, on March 1, 1990 Mr. Turchyn advised General Stores Supervisor J. Ksionzyk that the grievor had exercised his seniority and was available to relocate at any time. On March 2, 1990 the Company advised Mr. Sandulak to report to work at Thunder Bay on March 5. The issue becomes whether the grievor had established himself on a permanent position within the meaning of article 25.2 as of March 1, 1990, when a temporary position would have been available to him in Winnipeg. The Union submits that the grievor established himself on a permanent position as of March 1, by reason of his notice given on February 27. The Company submits, however, that the grievor did not establish himself until such time as he confirmed to the Company the date of his availability to commence work in Thunder Bay.

In the Arbitrator's view the position of the Union is more consistent with the language of article 25.2. It provides, in part, as follows:

**25.2** ... Within five calendar days of the date his position is abolished or within ten calendar days if he is displaced, such employee shall notify the appropriate Company Officer of the position to which he will exercise his seniority and he shall fill that position within five calendar days of date of notification; except that an employee absent on leave when his position is abolished or he is displaced shall exercise his seniority within ten calendar days from date of expiry of leave.

The foregoing provision contemplates that the employee is, at a minimum, to fill the position into which he has chosen to displace within five days of the date of his notification to the Company. However, the language of the excerpt from article 25.2 reproduced earlier in the award reflects the understanding of the parties that the process of establishing oneself in a permanent position is to be distinguished from filling the position. That plainly flows from the language which allows an employee to exercise his seniority "to fill a temporary position in compliance with the collective agreement prior to filling the permanent position on which established."

The language so construed is more consistent with the position advanced by the Union. In the circumstances of this case the grievor took all steps necessary to establish himself in the position at Thunder Bay by notification to the Company on February 27, 1990. No objection was taken by the Company at any time with respect to the qualifications or entitlement of the grievor to claim the position. While the actual filling of the position was to take place as of March 5, 1990, it appears that for the purposes of article 25.2 of the collective agreement the grievor did establish himself on a permanent position at Thunder Bay by reason of his notification to the Company, and that he was entitled to claim the temporary position in Winnipeg before filling the permanent position on which he was established.

The material establishes that the grievor was available for work on both March 1 and March 2, 1990, when a temporary position was available at Winnipeg, which was given to a junior employee. For these reasons the grievance must be allowed. The Arbitrator directs that the Company pay the claim of Mr. Sandulak in respect of wages for March 1 and 2, 1990.

15 November 1991

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