

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2199

Heard at Montreal, Tuesday 12 November 1991

concerning

**CANADIAN PACIFIC LIMITED**

and

**TRANSPORTATION COMMUNICATIONS UNION**

### **DISPUTE:**

A claim by the Union that Mr. M. Trottier should have been allowed to bid on a permanent bulletined position in the Vancouver Freight Claims office.

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

Prior to July of 1989, Mr. Trottier held a permanent position of train Machine Clerk No. 3 in the Coquitlam C.S.C. (formerly Vancouver C.S.C.). As a result of a job abolishment at Coquitlam, Mr. Trottier displaced into the Chief Accountant's office in Vancouver in accordance with Appendix 19 of the collective agreement (Consolidation of Seniority Rosters). In Appendix 19, Item 4, there is a provision for employees to return to their former rosters within one year of transfer. This item states that for one year an employee has the right to exercise his/her seniority to a bulletined permanent vacancy in the former seniority list.

Effective June 15, 1990, a permanent vacancy occurred in the Vancouver Freight Claims office.

In accordance with a previous letter of agreement, signed by the Union and the Company, effective May 1, 1985, which stated that any permanent vacancy in Vancouver Freight Claims office, would be bulletined back to the Vancouver C.S.C., this bulletin #FCS-11, dated May 16, 1990 was bulletined in the Vancouver (now Coquitlam) C.S.C.

This bulletin, as previously mentioned, was for a permanent vacancy. The Union maintains that in accordance with Appendix 19 of the collective agreement (signed April 19, 1989), Mr. Trottier should have been given the right to exercise to the bulletin posted in the Freight claims (#FCS-11), as any other permanently placed employee in the C.S.C. would. The Union's position is that Mr. Trottier's seniority rights should be "as if he was still permanently employed in the C.S.C." (for one year) and that to have whole seniority, he should have had the opportunity to exercise onto the vacant Freight Claims position.

The Company declined the Union's grievance and maintains that employees covered under Item 4 of Appendix 19 do not have the right to bid on vacant Freight Claims positions if they are not holding a permanent position in the C.S.C. concerned.

**FOR THE UNION:**

**(SGD.) D. J. KENT**  
FOR: GENERAL CHAIRMAN

**FOR THE COMPANY:**

**(SGD.) K. PORTER**  
ASSISTANT COMPTROLLER, REVENUES & CLAIMS

There appeared on behalf of the Company:

R. A. Hamilton – Personnel Manager, Finance & Accounting, Montreal  
D. J. David – Labour Relations Officer, Montreal

And on behalf of the Union:

D. J. Kent – Assistant Division Vice-President, Vancouver  
D. Deveau – Executive Vice-President, Calgary

### **AWARD OF THE ARBITRATOR**

The position of the Company flows from the content of an agreement outlined in a letter dated May 31, 1985 from Mr. K. Porter, System Manager Freight Claims to the General Chairman and System General Chairman of the Union. It provides, in part, as follows:

When future vacancies occur within the Freight Claims Department, such positions will be bulletined in the appropriate Freight Claims offices and awarded to Freight claims personnel. Any resultant vacancies subsequent to this procedure will be bulletined in the local C.S.C. and awarded per Article 24 of the Collective Agreement. ...

The Company takes the position that only employees who are permanently assigned to a Customer Service Centre position in the Vancouver C.S.C. were eligible to bid on the vacancy posted pursuant to the bulletin of May 16, 1990 for the position of clerk in the Vancouver Freight Claims office. At the time of the bulletin, although the grievor had previously been employed in the Vancouver C.S.C., he was no longer there, having left in July of 1989. The Company submits, therefore, that he was not entitled to bid on the vacancy as he was not permanently assigned to a C.S.C. position at the time of the job bulletin but, rather, was in the Chief Accountant's office in Vancouver.

The Union asserts its claim on the basis of paragraph 4 of Appendix A-19 of the collective agreement, which went into effect on April 14, 1989. It provides as follows:

4) An employee who exercises his or her seniority to a position in another seniority group pursuant to Items 1 and 2 above will retain his or her seniority in its former group and it will be dovetailed into the group to which transferring. He/she will retain seniority in the former group for one year after date of transfer for the purposes of exercising seniority to a bulletined permanent vacancy in the former seniority list if so desired, irrespective of any subsequent exercise of seniority that may occur during the one year period.

In the Arbitrator's view the position advanced by the Union is more compelling, on the totality of the collective agreement provisions examined. The intention of paragraph 4 of Appendix A-19 appears relatively clear. It preserves to an employee such seniority rights as he or she had in the employee's seniority group for a period of one year after the date of transfer, as relates to the exercise of seniority to a bulletined permanent vacancy in the former group. In the result, the parties have added a right which is supplementary to the rights contained in the agreement of May 31, 1985.

The intention and effect of paragraph 4 of Appendix A-19 is to give to an employee in the position of Mr. Trottier, who held seniority within the Vancouver C.S.C. within a year of the bulletin for the position of freight claims clerk, the ability to retain all of the seniority rights which he enjoyed at such time as he was a permanent employee in the C.S.C. By the agreement made in April of 1989 the parties must be taken to have extended the right fashioned in the 1985 agreement, by affording to the employee additional protection for one year.

To take the approach suggested by the Company would be to interpret the 1985 and 1989 agreements in a manner that is contradictory. Insofar as possible, the provisions of a collective agreement should be construed in a manner that is complementary, and not contradictory, absent clear language to the contrary. When the terms of the agreement are so construed, I am satisfied that the parties intended to preserve to persons in the position of Mr. Trottier, for the one year period contemplated in Appendix A-19, all rights in respect of positions bulletined in the local C.S.C. as contemplated under the agreement of May 31, 1985.

As it appears from the representation of the Union that no remedy is requested since Mr. Trottier is no longer a member of the Union, the Arbitrator limits the award to a declaration that the position advanced by the Union on behalf of Mr. Trottier is correct in principle. On that basis, the grievance is allowed.

November 15, 1991

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