

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2259

Heard at Montreal, Tuesday, 9 June 1992

concerning

ONTARIO NORTHLAND RAILWAY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

The Company awarded the position of B&B Foreman advertised on B&B Bulletin No. 1, dated March 26, 1990, to Mr. D. Locke, rather than to Mr. R.M. Paulin.

JOINT STATEMENT OF ISSUE:

It is the contention of the Brotherhood that the Company failed to follow the seniority rules of the B&B Foremen's seniority list when it awarded the B&B Foreman's position to Mr. D. Locke who had no seniority as a B&B Foreman.

The Brotherhood further contends that the Company violated Section 13, Article 13.9 which states that employees shall be promoted in order of seniority provided they are qualified. The Brotherhood maintains that Mr. Paulin meets the requirements set out in Article 13.9 of Section 13 in that: **(a)** he is senior, and **(b)** he is qualified as a Foreman.

The Company disagrees with both of the Brotherhood's contentions.

FOR THE BROTHERHOOD:

(SGD.) G. SCHNEIDER
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) P. A. DYMENT
PRESIDENT

There appeared on behalf of the Company:

M. J. Restoule – Manager, Labour Relations, North Bay
G. A. Payne – Chief Engineer, Rail Services, North Bay

And on behalf of the Brotherhood:

G. Schneider – System Federation General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that Mr. Paulin does not have seniority, either as a carpenter or as a B&B Foreman. The successful applicant, Mr. D. Locke, does hold seniority as a carpenter, and in fact has greater overall company seniority than Mr. Paulin. The evidence further reveals that during the course of the posting process the Brotherhood agreed to wording in the notice to the effect that "... preference will be given to employees presently holding carpenter seniority."

Much of the Brotherhood's position is based on its assertion that the work of the B&B Foreman is largely indistinguishable from the duties and responsibilities of the abolished position of B&B Terminal Foreman, a position formerly occupied by a number of persons who progressed from the ranks of Paint Foreman. The material before me, however, does not sustain the suggestion that the two positions are identical. On the contrary, the position of B&B Terminal Foreman involved substantial amounts of managerial responsibility, including estimating, scheduling employees, and the administration of discipline. The fact that persons with shop experience as Paint Foremen were deemed qualified for that position is not instructive to the case at hand, particularly where the parties have expressly agreed that preference is to be given to persons with carpenter's seniority.

As Mr. Locke had carpenter's seniority, and was overall senior to the grievor, there is no violation of the terms of the collective agreement disclosed in the awarding of the position of B&B Foreman to Mr. Locke. For these reasons the grievance must be dismissed.

June 12, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR