

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2670

Heard in Calgary, Wednesday, 15 November 1995

concerning

**CANADIAN PACIFIC RAILWAY LIMITED**

and

**TRANSPORTATION COMMUNICATIONS UNION**

### **DISPUTE:**

The awarding of the article 5 right of selection position of Chief Clerk in the Thunder Bay CSC.

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

On June 20, 1994, the Chief Clerk position in Thunder Bay was awarded to Mr. S. Krucien. The Chief Clerk position is a right of selection position and is governed by article 5 of the collective agreement.

The grievor, Mr. R. Andrucko, applied for the position of Chief Clerk in Thunder Bay by bid on September 21, 1993. However, the Company appointed a more junior employee (Mr. Krucien) to the position.

The Union progressed a grievance on behalf of Mr. Andrucko stating that he was not properly considered for the position given his past experience.

The Union is requesting that Mr. Andrucko be given an opportunity to work the position of Chief Clerk in Thunder Bay and that he be compensated for any loss of wages or benefits.

The Company has denied the Union's grievance.

### **FOR THE UNION:**

**(SGD.) D. JAMES KENT**  
DIVISIONAL VICE-PRESIDENT

### **FOR THE COMPANY:**

**(SGD.) C. GRAHAM**  
FOR: GENERAL MANAGER,  
OPERATIONS & MAINTENANCE, CPRS

There appeared on behalf of the Company:

C. Graham – Labour Relations Officer, Montreal

And on behalf of the Union:

D. J. Kent – Divisional Vice-President, Winnipeg

### **AWARD OF THE ARBITRATOR**

This grievance relates to the decision of the Company to award the position of Chief Clerk in the Thunder Bay CSC to an employee junior to the grievor. The position in question is covered by article 5.1 of the collective agreement which provides as follows:

**5.1** The Company shall have the right of appointment to the positions listed in Clause 5.3 except that seniority shall be a considering factor in filling vacancies in such positions and in filling new positions. The appropriate officer of the Company shall be the judge, subject to appeal.

The evidence discloses that the person to whom the position was awarded, Mr. S. Krucien, is in fact some four years junior to the grievor. The evidence also discloses, however, that the two employees competed for the same position in 1991. I am satisfied that at that time the Company gave full consideration to their relative qualifications, and came to a decision, in good faith, that Mr. Krucien was better suited to the position in question. I am also satisfied that the Company fairly concluded that there had been no material change in circumstances as regards the two individuals between 1991 and 1994, when the position was again put up for bid as a result of a job consolidation implemented by the Company. The Company fairly turned its mind to the application of the grievor and, for valid business considerations, came to the conclusion that Mr. Krucien, who by that time had held the position for some three years, was still the person to be preferred for the job in question.

It is well settled that the awarding of a right of selection position under the terms of article 5 of the collective agreement should not lightly be interfered with by this Office. As was stated in **CROA 601**:

... Under a clause such as Article 5, it is my view that for an arbitrator to set aside a Company's decision it would have to be shown that the Company acted unfairly, or according to the wrong principle.

(See also **CROA 339** and **1763**)

It is clear in the case at hand that the Company was aware of the relative seniority position of the grievor as compared with Mr. Krucien. For the reasons related above, however, it was not persuaded that that factor should become determinative in resolving the competing applications of both men. Its decision in that regard was made in good faith, and well within the general principles contemplated under the terms of article 5.1 of the collective agreement.

No violation of the agreement is, therefore, disclosed and the grievance must be dismissed.

November 20, 1995

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