

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2777

Heard in Montreal, Tuesday, 8 October 1996

concerning

**CANPAR**

and

**TRANSPORTATION COMMUNICATIONS UNION**

### **DISPUTE:**

Work done by a junior employee.

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

On December 22, 1995 the Company called junior employee Mr. A. André to work overtime. The junior employee worked from 4:00 o'clock to 8:30 a.m. for a total of 4.5 hours.

Mr. Pichette was available and qualified to do the work. Mr. Pichette worked as a warehouseman on several occasions in the past, most recently Dec. 12 and 13, 1995.

To justify their mistake, management said they had an agreement with a union representative. After investigation we have found this to be false.

The Company violated article 8.6 of the collective agreement.

Mr. Pichette should have been called to do the work. Therefore, Mr. Pichette claims 4.5 hours overtime.

### **FOR THE UNION:**

**(SGD.) R. NADEAU**  
**DIVISION VICE-PRESIDENT**

There appeared on behalf of the Company:

P. D. Macleod	– Vice-President Operations, Toronto
R. Dupuis	– Regional Director, Quebec
D. Dulude	– Lead Hand, Boisbriand
P. Cunningham	– Supervisor, Montreal

And on behalf of the Union:

R. Nadeau	– Division Vice-President, Quebec
R. Pichette	– Local Chairman, Montreal

**AWARD OF THE ARBITRATOR**  
**(translation)**

This grievance concerns the application of article 8.6 of the collective agreement, which reads as follows:

**8.6** If work is required by the Company to be performed on a day which is not part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week. Overtime shall be allocated on the basis of seniority wherever possible, in a voluntary manner, within the work classification and shifts, provided the employees is capable of performing the duties; however, upon reaching the bottom of the seniority list in that classification and shift, the junior employee(s) will be required, in reverse order to work the overtime.

The evidence establishes that the Company needed to fill a vacancy because of the absence of another employee the morning of December 22, 1995. The work in question consisted of pre-loading trucks for certain routes in Laval.

It is evidence that Supervisor Paul Cunningham was of the opinion that it would be preferable to have an employee who was familiar with the Laval routes perform the work of pre-loading. He therefore assigned the overtime to Mr. Alain André, a delivery driver who was junior to the grievor, Mr. Pichette, who worked in the Montreal sector. Furthermore, it appears from the evidence that Mr. Pichette, the local chairman of the Union, had communicated to Mr. Cunningham, through the intermediary of Mr. Steve Wheatley, that the Union did not agree that the work in question could be distributed on any basis other than seniority.

Mr. Pichette is an employee of twenty years' service. Like other drivers in the service of the Company, he had previously done pre-loading work without, it seems, receiving any complaints or discipline from the Company concerning his performance. Therefore, as it concerns the pre-loading, the Arbitrator must conclude that he was "capable of performing the work" within the meaning of article 8.6 of the collective agreement. The wording of article 8.6 does not give to Mr. Cunningham the right to choose the employee whom he judges to be the most capable or the most likely to accomplish the work of pre-loading.

Furthermore, the evidence concerning the communications between Mr. Cunningham and Mr. Wheatley raises disturbing questions concerning the good faith of Mr. Cunningham in his alleged communications with the Union's representatives. The supervisor was on notice that the President of the Union refused to agree to the calling to work of junior employees. In fact, that message had been communicated to him by Mr. Wheatley. In spite of that, Mr. Cunningham insisted on claiming before the Arbitrator that Mr. Wheatley had given him the agreement of the Union in order to justify the assignment of Mr. André. Unfortunately, as far as these events are concerned, the Arbitrator must conclude that Mr. Cunningham is lacking in credibility.

The evidence establishes that the grievor, Mr. Pichette, who was the senior of the eligible employees, was capable of performing the work of pre-loading which was available on the morning of December 22, 1995. Furthermore, it is clear that the Union did not agree to the assignment of a junior employee and that Mr. Cunningham understood, or reasonably should have understood, that.

Therefore, the grievance is allowed. The Arbitrator declares that the Employer did violate the terms of article 8.6 and orders that Mr. Pichette be compensated for his loss of wages and benefits, with interest.

October 11, 1996

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