

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 3119

Heard in Montreal, Thursday, 15 June 2000

concerning

**CANPAR**

and

## **TRANSPORTATION COMMUNICATIONS LOCAL 1976 STEELWORKERS**

### **DISPUTE:**

The Union contends that the Company acted in bad faith in abolishing a warehouseman position. Further, that the Company did so only to accommodate an employee who was previously awarded a bulletin he was not qualified for.

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

In May, 1999, employee Mr. Jim Thompson (a warehouseperson) was awarded a tractor float driver position. It was established that Mr. Thompson did not hold a driver's position therefore, was not entitled to bid for a float driver's position under the terms of the collective agreement (article 5.2.13). The Company reverted Mr. Thompson back to his former warehouseperson position.

The Union contends that the Company then promptly abolished Mr. Thompson's warehouseperson position, who exercised his rights under article 5.3.1 and displaced Mr. Faria. The Union asserts the Company meanwhile bulletined the exact same warehouseperson position they just abolished. The Union grieved the improper posting of the warehouseperson position. In response to the Union's grievance, the Union charge the Company then re-posted the bulletin position with a change in start time.

The Union requested that Mr. Thompson be reverted back to his former position of warehouseperson and that Mr. Faria revert back to the route from which he was bumped.

Further, the Union claims for all or any monies lost by Mr. Faria as a result of this bumping process.

The Company denied our request.

### **FOR THE UNION:**

**(SGD.) D. NEALE**  
**INTERIM PRESIDENT – LOCAL 1976**

### **FOR THE COMPANY:**

**(SGD.) P. D. MACLEOD**  
**VICE-PRESIDENT, OPERATIONS**

There appeared on behalf of the Company:

P. D. MacLeod – Vice-President, Operations, Toronto

And on behalf of the Union:

D. Neale – Interim President, Hamilton

### **AWARD OF THE ARBITRATOR**

Upon a review of the material filed the Arbitrator can find no violation of the collective agreement committed by the Company. The evidence of the employer, unrebutted by any contrary evidence of the Union, which does bear the burden of proof, is to the effect that it came to realize that the duties and responsibilities being exercised by Mr. Thompson, who was classified as a warehouseman or dockperson, were far more oriented towards relief driving, to the point where driving constituted by far the bulk of his work. In that context the decision was made to abolish his warehouseman's position, a decision which I am satisfied was made objectively and for valid business purposes.

As a person whose position had been abolished Mr. Thompson was entitled to exercise his seniority to displace a junior employee, in the instant case employee Faria, from his tractor-trailer driver's assignment. If Mr. Faria ended up with a later starting time, in essentially the same position, it was by the proper exercise of the collective agreement by the Company in dealing with Mr. Thompson.

For the foregoing reasons the grievance must be dismissed.

June 16, 2000

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