

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 3209

Heard in Calgary, Tuesday, 13 November 2001

concerning

### CANADIAN NATIONAL RAILWAY COMPANY

and

### BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

#### **DISPUTE:**

Appeal the assignment of lead hand position on Gang 5P42 to junior employee D. Poepell by senior employee D. Herdman.

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

In February, 2000 the Company advertised and then awarded a lead hand position to junior employee D. Poepell. A grievance was filed.

The Brotherhood contends: (1.) The grievor is completely qualified to perform the job advertised. (2.) The bulletin did not specify the necessity of any particular qualifications required. (3.) The Company violated article 5.2 of agreement 10.3. (4.) The grievor has been used in similar capacity in the past. (5.) The grievor possesses the necessary skills to perform the work.

The Brotherhood requests that the grievor, as of the Spring of 2000, be fully recognized by the Company as qualified to fill the position of Lead Hand and that he be compensated for all regular and overtime hours lost as a result of being denied a lead hand position since the Spring of 2000.

The Company denies the Union's contentions and declines the Union's request.

#### **FOR THE BROTHERHOOD:**

**(SGD.) R. F. LIBERTY**  
**SYSTEM FEDERATION GENERAL CHAIRMAN**

#### **FOR THE COMPANY:**

**(SGD.) S. ZEIMER**  
**FOR: VICE-PRESIDENT, PRAIRIE DIVISION**

There appeared on behalf of the Company [among others]:

B. Laidlaw – Human Resources Associate, Winnipeg

And on behalf of the Brotherhood [among others]:

P. Davidson – Counsel, Ottawa

R. F. Liberty – System Federation General Chairman, Winnipeg

At the request of the parties, the Arbitrator adjourned the hearing *sine die*.

On Tuesday, May 14, 2002, there appeared on behalf of the Company:

K. Morris – Manager, Human Resources,

S. Blackmore – Manager, Human Resources, Edmonton

W. Kuzio – Superintendent Work Equipment

And on behalf of the Brotherhood:

R. F. Liberty – System Federation General Chairman, Winnipeg

D. Brown – Sr. Legal Counsel, Ottawa

P. Davidson	– Legal Counsel, Ottawa
J. Dutra	– Federation General Chairman
S. Crawford	– General Chairman,
D. Herdman	– Grievor

### **AWARD OF THE ARBITRATOR**

The current grievance involves the interpretation and application of article 5.2 of the collective agreement 10.3, which reads as follows:

**5.2** Leading Hand Work Equipment positions will be established as required. Temporary vacancies of less than thirty days required by the Company to be filled, shall be filled by the best qualified employee immediately available. Vacancies of thirty days or more will be bulletined. Appointments to such positions shall be on the basis of the best qualified employee to fill the position. Where qualifications are equal, the greatest seniority in the highest rated group will govern.

Employees will not establish seniority as a result of being appointed to a Leading Hand Position, however, they will have an asterisk (\*) placed beside their names on the seniority list to signify that they are qualified to fill such positions.

The Brotherhood submits that the grievor was improperly passed over for selection as a lead hand, as the senior-most candidate for a competition advertised in February of 2000. It is evident from the language of article 5.2 that the onus is upon the Brotherhood to establish that the grievor's qualifications are equal to those of the successful candidate, within the meaning of article 5.2 of collective agreement 10.3.

The evidence before the Arbitrator establishes that the individual responsible for the selection process, Superintendent of Work Equipment Wes Kuzio, established an objective set of skills or job requirements, involving a number of factors such as the employee's overall background and skills experience, gang and field experience, shop experience, technical training, team work and leadership experience and self-development initiative, among others. He established a point system for the record of the five competing candidates under the thirteen categories established, and by his own assignment of values concluded that the successful candidate, Mr. Poepell, scored thirty-five points as compared with the thirty points scored by Mr. Herdman.

After an adjournment of the hearing to allow for the production of fuller documentation, and relatively close examination of Mr. Kuzio at the hearing, the Arbitrator is satisfied that Mr. Kuzio proceeded in good faith, and that his judgement was not exercised in a manner that would constitute an approach that could be characterized as arbitrary, discriminatory or in bad faith. Nor is it apparent to the Arbitrator that he applied factors extraneous to the position or disregarded any pertinent facts or elements reasonably within his knowledge. Further, the objective evidence tendered before the Arbitrator does confirm, for example, the fact Mr. Poepell did undertake more elective training courses than Mr. Herdman, a factor which Mr. Kuzio said he took into account in rating Mr. Poepell more highly in the area self-development initiative.

On the whole, the Arbitrator is satisfied that it is not appropriate to second-guess the decision of management with respect to its conclusion that Mr. Poepell was more qualified than Mr. Herdman. That is not to say that Mr. Herdman is not qualified to perform the duties of a lead hand, and indeed it appears that he was subsequently awarded a bulletin in that regard. While the Arbitrator appreciates the importance of seniority which the Brotherhood seeks to defend in these proceedings, I must take the collective agreement language as I find it. In the circumstances the Brotherhood has not adduced objective evidence to establish that Mr. Herdman was equal to or more qualified than Mr. Poepell within the contemplation of article 5.3 of collective agreement 10.3. For these reasons the grievance must be dismissed.

May 21, 2002

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