

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 3277

Heard in Montreal, Tuesday, 10 September 2002

concerning

### CANADIAN PACIFIC RAILWAY COMPANY

and

### BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

### EX PARTE

#### **DISPUTE:**

Claim on behalf of Mr. Arlindo Diasano (File #13-419).

#### **BROTHERHOOD'S STATEMENT OF ISSUE:**

In late 1998, the Company awarded two Track Maintainer positions (one permanent and one temporary) on the Special Maintenance Gang headquartered at Toronto Yard to Messrs J. Clements and G. Ardila. The grievor, an employee senior to both of the successful applicants, also bid for those jobs. A grievance was filed.

The Union contends that by taking the actions that it did, the Company violated sections 14.1, 14.6(a), 14.12, 27/5 and Appendix B-17 of Agreement No. 41.

The Union requests that the Company be ordered to issue a corrector bulletin awarding the Permanent Trackman "A" position in question to the grievor. The Brotherhood also requests that the grievor be made whole for all wages (both regular and overtime), expenses and seniority lost as a result of this matter.

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

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

#### **(SGD.) J. J. KRUK** **SYSTEM FEDERATION GENERAL CHAIRMAN**

There appeared on behalf of the Company:

E. J. MacIsaac	– Manager, Labour Relations, Calgary
R. V. Hampel	– Labour Relations Officer, Calgary
A. Damji	– Labour Relations Officer, Calgary

And on behalf of the Brotherhood:

P. Davidson	– Counsel, Ottawa
J. J. Kruk	– System Federation General Chairman, Ottawa
D. W. Brown	– General Counsel, Ottawa

### **AWARD OF THE ARBITRATOR**

The material before the Arbitrator establishes that the Company has developed a policy whereby persons who occupy permanent track maintainer positions must hold CROR "D" card status. Its representatives explain that although in the past, when track maintenance crews were larger, it was more feasible to have permanent track maintainers who might not have that qualification, the move in recent years to smaller maintenance crews has necessitated the change in the qualification requirements for persons who hold permanent positions as track maintainers. For example, they note that "D" card status allows the employees to hold a track occupancy permit, something which cannot be done by an individual without a "D" card.

The grievance is brought on behalf of Mr. Arlindo Diasano. It is not disputed that since 1992 Mr. Diasano has performed the functions of the track maintainer's position, and has held seniority in that classification since April 2, 1992. It appears that he first joined the Company in April of 1991 as an extra gang labourer working out of the Toronto Yard. He has never, in the ten years of his employment, completed "D" card certification.

It is common ground that to obtain CROR "D" card status an employee must successfully complete a four day course involving material which includes rules for the protection of track units, for the protection of track work, slow track protection, the operation of switches, emergency communication procedures and rules governing trains entering track occupancy permit limits. As is evident from the foregoing, "D" card status is important to safe and orderly operations in relation to the track maintenance function.

It is not disputed that the grievor did attempt to qualify in "D" card certification. He was unsuccessful in doing so, however. It appears that the primary difficulty is his limited ability in the English language, both written and spoken. It is also not disputed that the Company has made a standing offer to the grievor to reimburse him for the successful completion of an English language course, an offer which he has not pursued.

The Arbitrator agrees with the submission of the Company that the principles to be applied in the case at hand were reflected in **CROA 2649**. That case involved a company requirement that track maintainers bidding on certain snow clearing assignments in Montreal must have a basic driver's licence. In upholding the company's position the Arbitrator commented, in part, as follows:

In the Arbitrator's view this grievance must be resolved by recourse to certain basic principles. As a general matter, it is within the prerogatives of the Company to establish qualifications for particular job assignments, subject only to limitations negotiated by the Union within the terms of the collective agreement. It is generally considered by boards of arbitration that an implied term of any collective agreement is that qualifications for a given position must be established by the employer in good faith, and for *bona fide* business purposes having regard to the nature of the work in question, subject always to any specific restrictions found within the language of the collective agreement.

I am satisfied, based on the submissions before me in the case at hand, that the Company's decision to require "D" card status for persons holding permanent track maintainer's positions is reasonable, was implemented in good faith and is justified as being for valid business purposes. The command of the most fundamental safety rules governing maintenance operations and the enforcement of track occupancy permits is fundamental to the interests of the employer, and to the safety of employees, Company equipment and the public. While it may be arguable that the Company might take alternative means of assigning employees so as to eliminate the requirement, it is well within management's prerogatives to establish qualifications which will promote its legitimate business ends in the most efficient way. That is the rationale underlying the qualification which is the subject of this dispute. On the whole, the Arbitrator is satisfied that the Company has demonstrated that the "D" card qualification which it attached to the two track maintainer positions bulletined for the Special Maintenance Gang at Toronto in November of 1998 was reasonable, in good faith and for a valid business purpose. It was not in violation of the provisions of the collective agreement cited by the Brotherhood.

For all of the foregoing reasons the grievance must be dismissed.

September 13, 2002

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