

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 3740

Heard in Montreal, Tuesday, 14 April 2009

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

MAINTENANCE OF WAY EMPLOYEES DIVISION

DISPUTE:

Claim on behalf of Mr. Chris Blaschuk.

JOINT STATEMENT OF ISSUE:

On October 6, 2008, Awards Bulletin LD-10 was issued. The Bulletin stated that Mr. Kyle Buchanan had been awarded the Leading Track Maintainer's position on the HMU Mobile Gang headquartered at Guelph Junction. The grievor, Chris Blaschuk, also bid the position. It was his intention to establish seniority as an LTM. Mr. Blaschuk was not awarded the position because he was not qualified as an LTM and, therefore could not bid the position for seniority purposes only. A grievance was filed.

The Union contends that:

- 1) The Company is in violation of Section 3.7 of the Machine Operators Supplemental Agreement. That section provides that "an employee working in a position in Column A may establish seniority by bid in a classification in which they are qualified to work in Column B and in which they did no[t] previously hold seniority and will thereafter accumulate seniority in that classification.. ."
- 2) The grievor is a Machine Operator (in a position listed in Column A) who applied to establish seniority by bid in the LTM classification (a position listed in Column B).
- 3) When section 3.7 states that "an employee may establish seniority by bid in a classification in which they are qualified to work," it means that an employee must be qualified to work the position (1) to the extent that past practice dictates and (2) to the same extent that applies to every other employee who applies for the position.
- 4) Employees have never been required to complete LTM training before being awarded LTM positions. It should be noted that, over many years many employees have been awarded LTM positions who were no more qualified for the position than the grievor. In fact, in the present case the individual who was awarded the LTM position at Guelph Junction, Mr. Kyle Buchanan, possessed no greater qualifications than the grievor.
- 5) The Company has treated the grievor in an arbitrary and discriminatory manner.

The Union requests that: As a resolve to this grievance the Union requests that the grievor be awarded LTM seniority as of October 6,2008 and that he be compensated for any and all losses incurred as a result of this matter.

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

FOR THE UNION:

(SGD.) WM. BREHL
PRESIDENT

FOR THE COMPANY:

(SGD.) K. HEIN
FOR: ASSISTANT VICE-PRESIDENT

There appeared on behalf of the Company:

M. Thompson	– Labour Relations Officer, Calgary
B. Lockerby	– Labour Relations Officer, Calgary
J. Dorais	– Labour Relations Officer, Calgary
R. Wilson	– Assistant Vice-President, Industrial Relations, Calgary
C. Dupuis	– Service Area Planner, Clagary

And on behalf of the Union:

Wm. Brehl	– President, Ottawa
D. W. Brown	– Counsel, Ottawa

AWARD OF THE ARBITRATOR

The relevant provision of the collective agreement in dispute is section 3.7 of the Machine Operators Supplemental Agreement which reads as follows:

3.7 An employee working in a position in Column A may establish seniority by bid in a classification **in which they are qualified** to work in Column B and in which they did no[t] previously hold seniority in that classification as provided in Article 10.14 (a) of Wage Agreement No. 41.

(emphasis added)

I accept the Employer's point at the outset that the grievor and Mr. Buchanan, who was awarded the position, fall under different provisions of Wage Agreement No. 41. The grievor was a Machine Operator in a classification listed under Column A who was bidding the position to establish "seniority only" under section 3.7. Mr. Buchanan, on the other hand, bid the position with the intention of actually working in it and, unlike the grievor, was not governed by the same provision for that reason. In Mr. Buchanan's case, Wage Agreement No. 41 applied and he was awarded the position pursuant to section 9.14. Section 9.14 includes a reference to Appendix A-3 of Wage Agreement No. 41 which provides that an employee may be awarded a position with the requirement that he or she "can be qualified in a reasonable period of time". There is no comparable on-the-job training language found in article 3.7.

The thrust of the Union's position is that grievor's application for a position "for seniority purposes only" has nothing to do with whether another employee such as Mr. Buchanan bids the same position with the intention of occupying it immediately. The two employees, in the Union's view, are applying for the position pursuant to different provisions of the collective agreement: one for seniority purposes only and the other to work in the position and that the two never intersect. That interpretation, with respect, is not consistent with a meaningful interpretation of the words "qualified to work". As the Company notes, there is a difference between the words "qualified to work" and "qualified to bid" and the grievor simply did not have the qualifications to "work" in the position given that he had no previous experience as an LTM. In order to establish seniority, a machine operator like the grievor, in my view, must show at

least some working qualifications as an LTM. Otherwise, the Employer in immediate need of an experienced LTM would be required to take on an individual with no LTM experience, like the grievor, over a qualified but less senior employee. The current provisions allow for employees with no LTM experience to exercise their seniority, and receive on-the-job training, but only if they are prepared to occupy the position, as was the case with Mr. Buchanan. No such right is available to an employee like the grievor who in this case had no intention of occupying the LTM position.

The Union also submits that past practice demonstrates that employees have never been required to complete LTM training before being awarded LTM positions because the Company does not offer such training. There is no reliable evidence before me which clearly supports this proposition, particularly in the face of the clear language of the collective agreement.

For these reasons, the grievance is dismissed.

May 4 , 2009

(signed) JOHN M. MOREAU QC
ARBITRATOR