CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 123

Heard at Montreal, Tuesday, October 8th, 1968

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

DISPUTE:

Claim of Warehouseman H.S. Crawford for the position of Warehouseman-driver, as posted on Bulletin No. 318 at Winnipeg, on July 19, 1966, and for which he applied. On July 28, 1966, Bulletin No. 318A was posted awarding the position to M. Balan, another applicant, who is junior in service to Crawford, indicating Crawford as N.Q. (not qualified).

JOINT STATEMENT OF ISSUE:

The Brotherhood contends that the position should have been awarded to Crawford in accordance with Articles 13.3 and 14.1 of the Agreement.

Articles 13.3 and 14.1 read as follows:

> 13.3 Employees desiring bulletined positions shall file their applications with the officer designated in the bulletin prior to the closing date of the bulletin; and an appointment shall be made within five calendar days, (excluding statutory holidays), thereafter.
>
> 14.1 Promotions shall be based on ability, merit and seniority; ability and merit being sufficient, seniority shall prevail. The Officer of the Company in charge shall be the judge, subject to appeal.

The Company contends that Article 14.1 of the Agreement was not violated for it was judged by the Officer of the Company in charge that Crawford did not have sufficient ability to fill the position.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(Sgd.) L. M. PETERSON	**(Sgd.) W. H. McDONALD**
GENERAL CHAIRMAN	**GENERAL MANAGER, MERCHANDISE SERVICES**

There appeared on behalf of the Company:

D. Cardi	– Labour Relations Assistant, Montreal
C. C. Baker	– Assistant to General Manager, Merchandise Services, Vancouver
V. A. Birney	– Superintendent of Operations, Winnipeg

And on behalf of the Brotherhood:

L. M. Peterson	– General Chairman. Toronto
G. Moore	– Vice General Chairman, Moose Jaw
F. C. Sowery	– Vice General Chairman, Montreal

AWARD OF THE ARBITRATOR

The grievor, a warehouseman, applied for the posted job of Warehouseman-Driver. An employee junior to him was awarded the job. Under the provisions of the collective agreement then in effect, the grievor, being senior, would have been entitled to the job if he had sufficient "ability and merit" to do the work available. If he was considered to have such ability and merit, and was assigned to the position, then he would have a period of up to thirty days to demonstrate his ability to perform the work. The grievor, however, was not considered to have sufficient ability, and was not assigned to the position. It is only when the assignment is made that the question of trial period arises. Here, the issue is whether the grievor ought to have had the assignment. To succeed, the union must show that the grievor had sufficient "ability and merit" to entitle him to that assignment.

There is little before me as to the duties of a Warehouseman-Driver. It is clear, however, that driving a truck is among those duties. The considerations which tend to show the grievor's ability to perform these duties are these: he holds a Province of Manitoba chauffeur's licence; he had driving experience with the Canadian Army; and he had driven previously for another trucking firm. In the absence of anything to the contrary, I would conclude that the grievor had the apparent qualifications for the job and would be entitled to be assigned to it, and consequently to have the thirty-day trial period provided for.

The company, however, did not consider that the grievor had the qualifications for the job. It was the company's submission that the grievor had not previously qualified for the job by taking a driving test. There is no requirement that an employee demonstrate his ability to perform work before that work becomes available, however, and it is my view that the company erred in rejecting the grievor's application on that basis. The only basis for rejection was lack of ability: if the company wished, it could require the grievor to undergo a test of ability.

Subsequently, the grievor requested and was given a driving test on the basis of the test, he was adjudged not qualified for the job. While there is very little before me as to the test, it is clear from article 14.1 that "the officer of the Company in charge shall be the judge", and I could not except on the clearest evidence, substitute my opinion of the grievor's ability for that of the person immediately concerned.

The company is entitled to set proper requirements for the work to be performed. Although the grievor's qualifications, set out above, do support his contention that he was qualified, his failing the test is an answer to that. While the Company did not act on the correct grounds in the first instance, it has met the grievance by showing that the grievor did not pass his test.

For the foregoing reasons, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR