CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 339

Heard at Montreal, Tuesday, February 8th, 1972

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

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

DISPUTE:

Claim of employee P. Smith that she should have been awarded the position of Accountant, Vancouver Wharf Freight Office.

JOINT STATEMENT OF ISSUE:

Mrs. P. Smith, seniority date May 21, 1951, applied for the position of Accountant (Rule 3). The position was awarded Mr. T.F. Porkolab seniority date August 22, 1958. Rule 3 reads as follows.

> In regard to the following positions where appointment, pay for overtime and holiday work have been on a basis different from that provided in the rules of this agreement, the past practice shall be continued unless otherwise mutually agreed upon between the management and the General Chairman, excepting that seniority shall be a considering factor in filling vacancies in such positions. The officer of the Company in charge shall be the judge, subject to appeal.

Mrs. P. Smith, at the request of the Company, has relieved the position of Accountant on several occasions. The Brotherhood contend that Mrs. Smith should be awarded the position of Accountant and given the opportunity to demonstrate her ability to perform the work.

The Company denied the request.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) R. WELCH	(SGD.) W. W. STINSON
GENERAL CHAIRMAN	REGIONAL MANAGER, O & M, PACIFIC REGION

There appeared on behalf of the Company:

D. Cardi	– Labour Relations Officer, Montreal
L. E. Wedman	– General Agent, Local Wharf Freight Office, Vancouver
P. E. Timpson	– Labour Relations Assistant, Vancouver

And on behalf of the Brotherhood:

R. Welch	– General Chairman, Vancouver
M. Peloquin	– Administrative Assistant to International Vice-President, Montreal

AWARD OF THE ARBITRATOR

The position of Accountant, Vancouver Wharf, is one of the positions listed under Rule 3. Accordingly, in making appointments to bulletined jobs in that classification, "past practice" (which is not here in issue) shall prevail, except that seniority is to be "a considering factor". In this respect, Rule 3 is to be distinguished from Rule 44, under which seniority "shall prevail" where ability and merit are sufficient. In both cases, the officer of the Company in charge is to be the judge, subject to appeal.

Where, as here, the collective agreement specifically provides that an officer of the Company is to be the judge of such a matter, and where an internal appeal has not succeeded, the question for the Arbitrator is two fold: whether the officer made his decision in a discriminatory or arbitrary manner, and whether he considered the case before him in accordance with the principles established in the collective agreement. In the instant case, there is nothing to support any allegation that the officer behaved in an arbitrary or discriminatory manner: he did consider the grievor's case, and recognized that the grievor had more seniority than the successful candidate for the position. (As far as this case is concerned, it is of no moment that there was another unsuccessful candidate with greater seniority, and perhaps with greater qualifications than the grievor; the grievor has presented the only grievance before me, and it is her case only which is to be considered.)

The particular question in this case, then, is simply whether the grievor's case was considered properly in the light of the principles set out in the collective agreement. Had this case come within Rule 44, then it might well have succeeded, since Rule 44 requires only that the senior candidate have "sufficient" merit and ability. On the evidence, which shows that the grievor had in fact performed the duties (or some of the duties) of the position on a temporary basis on a number of occasions, it might well have been concluded that she had "sufficient" merit and ability for the job. The relatively high level job in question, however, is to be awarded in accordance with Rule 3, which sets out a different standard, and affords the Company a range of discretion in making appointments. Here, seniority is not decisive where an applicant has sufficient ability, but is rather "a considering factor" in filling vacancies. When these two methods of making appointments are considered, it is clear that the Company is entitled to select the best from among qualified applicants. Where qualifications were relatively equal, then seniority would, very likely, be the determining factor. Otherwise, however, it is only one of the factors to be considered.

In the instant case while, as I have indicated, the grievor might well be thought to have "sufficient" merit and ability for the job, the Company did have good grounds to conclude that the successful candidate had substantially better qualifications than the grievor or indeed any other candidate. While the successful candidate did not have as much experience with this Company, perhaps, he did have very substantial experience and training in the railroad industry. The Company was entitled to consider this as well as other factors, in assessing his application under Rule 3, and it cannot be said that the decision reached was improper.

For the foregoing reasons, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR