

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 124

Heard at Montreal, Wednesday, October 9th, 1968

Concerning

**CANADIAN NATIONAL RAILWAYS**

and

**CANADIAN BROTHERHOOD OF RAILWAY,  
TRANSPORT AND GENERAL WORKERS**

### **DISPUTE:**

The Brotherhood claims that the Company by disqualifying Mr. M. Bogda for the position of Accounting Clerk in the Area Comptroller's Office, Edmonton, Alberta, violated Article 12.11 of Agreement 5.1.

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

On December 15, 1967 the Company issued a bulletin advertising the position of Accounting Clerk in the Area Comptroller's Office in Edmonton, Alberta.

There were eighteen (18) applications received in response to the bulletin and on December 27, 1967 the Company, on the basis of qualifications, issued a bulletin awarding the position to Mr. J.J. Van Uffelen who was the sixth senior applicant.

Four of the five senior applicants to J.J. Van Uffelen appealed the appointment and were declined by the Company on the basis they lacked qualifications considered necessary for the position of Accounting Clerk. The Brotherhood contends that Mr. Bogda, the senior applicant appealing the appointment, should be assigned to the position and allowed up to thirty (30) working days to demonstrate his ability under the provisions of Article 12.15 of the current Collective Agreement.

### **FOR THE EMPLOYEES:**

**(Sgd.) J. A. PELLETIER**  
**EXECUTIVE VICE-PRESIDENT**

### **FOR THE COMPANY:**

**(Sgd.) E. K. HOUSE**  
**ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS**

There appeared on behalf of the Company:

D. O. McGrath           – Labour Relations Assistant, Montreal  
P. A. McDiarmid       – Labour Relations Assistant, Montreal  
R. J. Brousseau       – Area Controller, Edmonton

And on Behalf of the Brotherhood:

H. L. Critchley       – Representative, Edmonton  
F. J. Allen           – Witness  
F. C. Johnston       – Regional Vice-President, Toronto  
J. Huggins           – President, Local 283, Toronto

### **AWARD OF THE ARBITRATOR**

Article 12.11 of the collective agreement in effect between the parties at the time material to this grievance provided as follows:

**12.11** When a vacancy or a new position is to be filled, it shall be awarded to the senior applicant who has the qualifications required to perform the work. Management will be the judge of qualifications subject to the right of appeal by the employee and/or the Brotherhood. The name of the appointee and his seniority will be shown on the next bulletin.

On the job posting notice, the main duties for the job in question were set out as follows:

Verify coding on various accounts. Verify labour distribution for Engineering or Equipment Sections. Successful applicant must have good knowledge of Engineering or Equipment accounting procedures.

The union raised some question as to whether the requirement of knowledge of Engineering or Equipment accounting procedures was proper, but in my view, having regard to the nature of the work required to be done, it was not unreasonable to require such knowledge of a successful applicant. Management is to be the judge of qualifications (subject to the right of appeal) and is entitled to establish reasonable criteria of qualifications.

It is clear from article 12.11 that if Mr. Bogda was qualified to perform the work available as an Accounting Clerk, then he was entitled (at least as against the successful applicant, who was junior to him), to be assigned to the job. He would then be entitled to the thirty-day "trial period" provided for by article 12.15 of the collective agreement. That article provides as follows:

**12.15** An employee, who is assigned to a position by bulletin, will receive a full explanation of the duties of the position and must demonstrate his ability to perform the work within a reasonable probationary period up to thirty (30) working days, the length of time dependent upon the character of the work. Any extension of time beyond thirty (30) working days shall be locally arranged. Failing to demonstrate his ability to do the work he shall be returned to his former position without loss of seniority and the employee so displaced will be allowed to exercise his seniority.

Article 12.15 only applies to employees who have been awarded jobs pursuant to article 12.11. It may be that had Mr. Bogda been awarded the job as Accounting Clerk, he would have demonstrated his ability to do the work within the thirty-day period there set out. The issue in this case, however is only whether Mr. Bogda was entitled to be assigned to the work in the first place. His right of seniority is not in question. His qualifications are the only issue.

The union is quite correct in its submission that the question is simply whether the grievor himself has the qualifications required to perform the work, and indeed the company does not contest this point. Article 12.11 does not contemplate a competition between applicants; it would not be significant if some of the applicants were more qualified than others. In the instant case Mr. Bogda, along with other unsuccessful applicants was given a test to determine his qualifications for the work. The test apparently was administered pursuant to article 12.16 of the collective agreement, which is as follows:

**12.16** When a senior applicant is not awarded a bulletined position, he may appeal the appointment, in writing, within fourteen (14) calendar days of such appointment through the grievance procedure. After making an appeal, he may be required to demonstrate his qualifications for the position. The Local Chairman may be present at such demonstration.

This test was given to the successful applicant as well as to the grievor and others. It is not surprising that the successful applicant, having worked on the job did substantially better than the others. I cannot attach any significance to this, since as I have indicated, the question is only whether the grievor himself was qualified.

It is not necessary for me to decide whether the test itself produced a fair assessment of the grievor's qualifications – the grievor received a very low mark, and if the test was fair, then that would dispose of the case. If the test did not accurately reflect his qualifications, then regard must be had to his experience, and I propose to consider the matter on that basis.

Mr Bogda had a number of years' clerical experience in the express department, and there is no doubt that his service was satisfactory. On his application for the job, Mr. Bogda cited the following qualifications:

Held various jobs in Express, Value Clerk, On Hand Clerk, Way Bill Clerk, Assistant Cashier, L.C.L. Rate Clerk and at present Timekeeper in Express Dept.

He had no experience with Engineering or Equipment accounting procedures. Since such experience was properly required as a qualification for the work, it must be concluded that Mr. Bogda, despite the qualifications which he did have, lacked the necessary qualifications for the work in question.

At the time of the job posting Mr. Bogda was employed in salary group "E". The job of Accounts Clerk was in salary group "F", the next higher group. I am unable to accept the union's contention that the holding of a job in salary group "E" is of itself qualification for a job in the higher group. The question of qualifications for a posted job is in every case a question of relating the qualifications which any particular employee may have to the requirements of the particular work available. An employee in one group is not automatically qualified to perform the work of another group, nor, correspondingly, is he limited in his aspirations to the next higher group. It is a question of matching the employee with the job in every case. In the instant case, as I have found (and disregarding entirely the test which was administered), the grievor has not shown that he had the qualifications necessary for the work available.

Accordingly, the grievance must be dismissed.

**(signed) J. F. W. WEATHERILL**  
**ARBITRATOR**