

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 234

Heard at Montreal, Wednesday, September 9th, 1970

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

The Brotherhood claims that the Company by disqualifying Messrs. R.J. Shaw, D. Smith & M. Barrett for the position of Chief Administrative Clerk in the Coastal, St. John's, Newfoundland, violated Article 6.8 and 6.13 in the 6.1 Agreement.

JOINT STATEMENT OF ISSUE:

On April 15, 1970 the Company issued a bulletin advertising the position of Chief Administrative Clerk, Coastal Dept. St. John's, Newfoundland.

Amongst the applications were applicants R.J. Shaw, D. Smith & M. Barrett. On April 30, 1970 the Company awarded the position to Mr. R. Martin – a junior employee to the three grievors.

The grievors appealed the appointment and were declined by the Company on the basis they lacked qualifications considered by the Company necessary for the position of Chief Administrative Clerk. The Brotherhood claims that the three grievors who are senior to Mr. Martin have the necessary qualifications and should have been given preference over Mr. Martin.

The Company has denied the Brotherhood's request.

FOR THE EMPLOYEES:

(SGD.) E. E. THOMS
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) K. L. CRUMP
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

P. A. McDiarmid – System Labour Relations Officer, Montreal
G. James – Assistant Labour Relations Officer, Moncton
H. E. Dickinson – Terminal Traffic Manager, St. John's
L. V. Collard – System Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

E. E. Thoms – General Chairman, Freshwater, P.B
M. Peloquin – Administrative Assistant to International Vice-President, Montreal

AWARD OF THE ARBITRATOR

The grievors, who were, respectively, a clerk in the accounting department, a general clerk in the engineering department and an accounting clerk in the dockyard, applied, along with eight others, for the bulletined job of chief administration clerk in the coastal department at St. John's. The job was awarded to an employee junior to each of the grievors.

The material provisions of the collective agreement are as follows:

6.8 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 date will be shown on the next bulletin.

...

6.13 An employee who is assigned by bulletin to a position shall be given reasonable time in which to qualify, up to thirty days (the length of time depending on the character of the work), and failing will be returned to his former position without loss of seniority.

The question in this case is whether any of the grievors, considered in order of seniority, had the qualifications required to perform the work in question. Each was judged by management not to have such qualifications. That is a judgment for management to make, subject to the employee's right of appeal. While an employee is entitled to a reasonable period in which to demonstrate his ability to perform the work, he must nevertheless have the qualifications at the time the appointment is made.

The duties and qualifications of the job in question, as set out in the bulletin were as follows.

Duties: Supervision of Coastal dept., handling of cash, coastal freight rates, customs and other work as may be assigned by Terminal Traffic Manager Qualifications. Knowledge of coastal operations

Subsequently, the company has described the qualifications as a "thorough" knowledge of coastal office procedure, but I think nothing turns on this. Obviously a candidate for the job would not have as thorough a knowledge as one who had performed it for years. He would, however, have to have a reasonable knowledge of the work of the office of which he was to be the senior clerical employee. In the company's judgment, the qualifications needed are most likely to be found in someone with coastal office experience or with experience in similar operations, or possibly with rail freight experience. These are matters on which the company is to judge, and while that judgment is subject to review, it would not seem to have been unreasonably exercised in this case. None of the grievors had any experience in freight or coastal offices. It was argued that they had the "basic qualifications" for the job, but what these are was not presented in any detail. It was clear from their records that they would have certain clerical skills in varying degrees, and that they have considerable length of experience with the company. Being qualified to perform the job in question, however, means more than that. The only possible conclusion on the material before me is that it has not been shown that the grievors were qualified for the job in question at the material times.

One of the grievors, Mr. Barrett, was in fact appointed to the job of chief administration clerk in 1969, although he did not in fact work at the job then. That appointment, it appears, would have been of a temporary nature, and the experienced incumbent would have been available for advice and assistance. The circumstances were different, and the company's willingness to accept Mr. Barrett then does not prove that he was in fact able to perform the job on his own in 1970.

Reference was also made to a test given to applicants for the job after complaints had been made over the appointment of a junior man. Only one of the grievors, Mr. Shaw, actually wrote the test. While failure to take a test might in some circumstances not be held against an employee, here the grievors' qualifications were very much in doubt, and their failure to take the test did nothing to assist the company in its determination. The test itself appears to relate to the work to be performed, and there is no satisfactory ground for concluding that it was unrealistic or unfair. Mr. Shaw's mark was very low.

It has not been shown that the grievors had the qualifications for the job. I am not satisfied that the company exercised its judgment in an arbitrary, unreasonable or discriminatory manner in this case, but even if I were, there would be no basis for awarding the job to any of the grievors.

Accordingly the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR