CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 281

Heard at Montreal, Tuesday, May 11th, 1971

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claim that the Company violated Article 21.7 of Agreement 5.1 when it advertised a vacancy in an existing position of Stenographer at Montreal with the requirement that the successful applicant would be required to take shorthand in both English and French.

JOINT STATEMENT OF ISSUE:

A position of Stenographer was advertised on July 27, 1970 with the requirement that the successful applicant would be required to take shorthand in both French and English. The Brotherhood claims that Article 21 of the Agreement was violated and requested that the position be readvertised without this requirement.

The Company denied the Brotherhood's claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. A. PELLETIER	(SGD.) K. L. CRUMP
NATIONAL VICE-PRESIDENT	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. O. McGrath	– System Labour Relations Officer, Montreal
G. A. Carra	– Regional Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

P. E. Jutras	– Regional Vice President, Montreal
J. A. Levia	– Representative, Montreal
R. Stratton	– Local Chairman, Montreal

AWARD OF THE ARBITRATOR

The position of Stenographer was established in 1961 when the company's structure was reorganized. Subject to the determination to be made in this case, there have been no changes in the nature of the duties and responsibilities of the position. Until 1967, it seems the position was known as Clerk-Stenographer, but it has no clerical duties as such, and since 1967 it has been known as Stenographer, and is so styled in the Standardization of Classifications agreed to in that year. By agreement, positions were placed at agreed-upon wage levels based upon a determination of "significant differences" in the Job Classification Plan there is one system-wide classification of Stenographer. There is no detailed job description, but the general duties of the classification are well known. There is no reference in the Classification to any language qualifications. It seems that both before and after the wage rate for the classification was agreed upon, the employer, where it has been appropriate to do so, has bulletined vacancies for the position specifying ability to take shorthand in both English and French as a qualification.

In the instant case, the union takes the position that the requirement of an ability to take shorthand in more than one language constitutes a change in the classification. In my view, this would, as a general matter, be correct. In **Case No. 257** it was held that the requirement of bilingualism in the position of Motorman was one that went beyond the bounds of that classification. It was said that the ability to carry out business dealings in two languages is a substantial one, involving distinct skills, aptitudes and learning. To require of a Motorman that he be able to deal with customers in both French and English was, it was said, to impose a substantial additional qualification, one which might well be said to amount to a change in the classification itself, or at least to take the particular job out of the agreed classification.

In the instant case, for the same reasons, it is my view that the requirement of bilingualism is a substantial additional qualification to those normally required of the job of Stenographer. It was said by the company that the parties had agreed, in determining wages, that the requirement of speaking both languages, where it existed was not a "significant difference". On the plain meaning of the words, it would be my view that it was, but in an event, there is not sufficient proof of any specific agreement to that effect. On general considerations, therefore, it would be my view that the union's position is well taken.

There are, however, two arguments advanced by the company which must be considered. The first is that since the position of Stenographer has in many cases since at least 1967, been advertised as having a bilingual qualification, and that it is now too late for the union to object. I am unable to accept this argument. If in fact the company is requiring employees to perform work outside of their classification, employees may grieve, even though it would be too late to recover in respect of past circumstances. Such a grievance is of a continuing nature, and in such a case the remarks of Professor Laskin, as he then was, in the **Canadian General Electric** case, 3 LAC 980, 982, apply.

The second argument is that in fact the parties accepted bilingualism as a proper qualification for the job of Stenographer when the rates were negotiated. No express agreement to this effect has been established. It seems clear, however, that at the time when the rate for the classification was struck, it was known to both parties that in many cases Stenographers were in fact required to be bilingual. Bilingualism was – and the fact is not in dispute – a well-known aspect of the job as it existed at the time. The requirement of bilingualism is not a change from the requirements expected when the wage agreement was made. In my view, having bargained in respect of the job as it then existed, the union cannot now be heard to say that it has been changed. Although, as I have indicated, it appears to me that bilingual ability is a significant difference, and that the requirement of stenographic ability in two languages goes beyond the apparent scope of the classification it is unfair for the union to raise this matter now, when the parties bargain for the job as it stood. That is, it is estopped from making such a claim, the company having relied on the state of events which existed when the wages were agreed. There was no such estoppel in **case No. 257**.

On this last ground, therefore, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR