

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 308

Heard at Montreal, Wednesday October 13th, 1971

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

The Brotherhood claims the Company violated Article 6 in the 6.1 Agreement when it did not award Mr. Hayward Young the position of P&D Motorman at Stephenville, Newfoundland.

JOINT STATEMENT OF ISSUE:

The Company advertised for a P&D Motorman at Stephenville, Newfoundland. Mr. Hayward Young applied for the vacancy but it was awarded to a junior employee. The Company claims that Mr. Young was not qualified for the position of P&D Motorman. The Brotherhood claims that Mr. Young did have sufficient qualifications for the position of P&D Motorman and requested that he be awarded the position and, in addition, compensated for any loss of wages because of his not being awarded the position.

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
W. Harris – System Driving Supervisor, Montreal
H. Peat – Employee Relations Officer, St. John's

And on behalf of the Brotherhood:

E. E. Thoms – General Chairman, Freshwater, P.B.

AWARD OF THE ARBITRATOR

The material provision of the collective agreement is Article 6.7 which is as follows:

6.7 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.

The grievor was the senior applicant, and the only issue is whether he had the qualifications to perform the work in question. Article 6.7 does not call for a competition as between employees, but simply for the determination – by management, in the first instance, subject to appeal – of who is the senior qualified employee.

In support of its claim that the grievor was qualified for the job of P&D Motorman, the union relies upon the results of a test given the grievor by one of the company’s driving instructors. Unfortunately, the result of the test was that the grievor was failed for city driving, that is, for the sort of work in question. While in many respects his performance on the test was “satisfactory”, in a number of others it was marked as only “fair” instruction given, “requires practice”, and in respect of “intersection and danger points” and “judgment of clearances”, he was marked as “failed, requires further instruction”.

The driving instructor indicated that the grievor would be “O.K. to use for trap trucking and around yard”, but he was not considered to be qualified for the job in question.

Under the collective agreement, management is to be the judge of an employee’s qualifications. In the instant case, it was the judgment of management, after testing the grievor, that he was not qualified for the job in question. There is no evidence that the test was inappropriate, or that it was not fairly given, or that the grievor was somehow the object of wrongful discrimination. The evidence of the company’s system driving supervisor is that the failure of the grievor in the particular respects referred to would absolutely disqualify him for the job, and it does not appear that that was at all unreasonable. It would seem that the grievor was qualified to perform certain limited driving jobs, but that he was not qualified to perform the work of a P&D Motorman.

It has not been shown that there was any violation of the collective agreement, and the grievance must accordingly be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR