CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 321

Heard at Montreal, Tuesday, November 9th, 1971

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood claims that the Company violated Article 5.1 of Agreement 5.49 by disqualifying Mr. E. Gregory when a position of 4th Engineer was awarded to a junior employee.

JOINT STATEMENT OF ISSUE:

On November 25, 1970 the Company posted a notice advising that a position of 4th Engineer was vacant on the M.V. William Carson. The Company awarded the position to Mr. M.T. Day. Subsequently Mr. Gregory, who is senior to Mr. Day, appealed the appointment. The Brotherhood contends that Mr. Gregory should be assigned to the position in accordance with Article 5.1. The Company maintains there has been no violation of Article 5.1 and has turned down the Union's request.

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.

L. V. Collard	– System Labour Relations Officer, Montreal
G. J. James	– Labour Relations Assistant, Moncton
A. A. Burgess	– Maintenance Superintendent – Vessels, St. John's,

And on behalf of the Brotherhood:

L. K. Abbott	– Regional Vice-President, Moncton
G. MacIntyre	– Representative, Sydney
E. Gregory	– Grievor

AWARD OF THE ARBITRATOR

On November 25, 1970 the company posted a notice advising that a position of 4th Engineer was vacant on the M.V. William Carson. The grievor applied for the position, but it was awarded to a junior employee.

Article 5.1 of the collective agreement provides as follows:

> **5.1** Promotion shall be based on ability, qualifications, certificate and seniority; ability, qualifications and certificate being sufficient, seniority shall prevail. The officer of the Company in charge shall be the judge, subject to appeal.

There is no doubt, as has been said in many cases, that it is the responsibility of the employer to determine what qualifications it requires for the jobs it wishes to have done. Certain qualifications existed for the job in question, and among these was that the successful candidate have a third class engineer's certificate. In this case the grievor did not hold a third class engineer's certificate, although he did hold a fourth class certificate. The successful candidate did hold a third class certificate.

There is no doubt, under the provision of the collective agreement set out above, that a senior applicant would be entitled to a posted job if he has "sufficient" "ability, qualifications and certificate". Here, there is no question raised of the grievor's ability and qualifications, his application was rejected because he did not have the required certificate.

It was the union's case, in essence, that it was not necessary for the grievor to hold a third class certificate. It was pointed out that under the provisions of the **Canada Shipping Act**, the grievor, holding the certificate he did, could have acted as a fourth engineer, and indeed even as second engineer, and still been in compliance with the law. Further, the fact is that the grievor has in fact served as fourth engineer on the M.V. William Carson, that is, he has done the job in question. Certainly, if it were not for the requirement of holding third class papers, there would be no doubt on the material before me that the grievor would be entitled to the job.

It has not been established, however, that the requirement of holding a third class certificate is improper, or that it should be disregarded. The company is entitled to set qualifications for its jobs, as I have said, and there is nothing improper in its setting standards that go beyond the minimums imposed by law. The company did not need to impose the requirement of a third class certificate in order to comply with the law, but it thought it best to impose such a requirement having regard to its own operations, and that is the sort of managerial decision it is entitled to make.

As to the grievor's actual experience on the job, it may have been, as the company suggested, that no one was then available who met the requirement of having third class papers, so that the company was constrained as a matter of practical necessity, to make use of the services of those it considered less qualified, although within the requirements of the law. That does not prevent it from seeking to fill its jobs with people who meet the desired qualifications, when these are available.

Since the grievor did not have a "sufficient" certificate to meet the requirements imposed by the company for the job in question, he was not, under Article 5.1 of the agreement, entitled to preference over others by reason of his seniority. Accordingly, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR