

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 403

Heard at Montreal, Tuesday, April 10th, 1973

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 appoint Mr. T. Pumphrey to File Clerk's position in the Equipment Department, St. John's.

JOINT STATEMENT OF ISSUE:

Area Bulletin No. 18/1 advertised for a File Clerk in the Equipment Department, St. John's and made no reference in the qualifications to "Typing".

Mr. T. Pumphrey applied for the position and was denied. The Company gave as its reason that the applicant was not proficient in typing.

The Brotherhood grieved on behalf of Mr. Pumphrey stating that the typing requirement was not shown as a qualification in the Bulletin.

The Company claimed this was an oversight and a knowledge of typing should have been included in the Bulletin.

The Brotherhood demanded that Mr. Pumphrey be awarded the position and compensated for all loss of wages.

The Company denied the Brotherhood's demands.

FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) E. E. THOMS (SGD.) G. H. BLOOMFIELD

GENERAL CHAIRMAN ASSISTANT VICE President, LABOUR RELATIONS

There appeared on behalf of the Company:

D. O. McGrath – System Labour Relations Officer, Montreal

G. J. James – Labour Relations Assistant, Montreal

E. D. MacDonald – Labour Relations Assistant, Moncton

And on behalf of the Brotherhood:

M. J. Walsh – Local Chairman, St. John's

D. Herbatuk – Vice-General Chairman, Montreal

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AWARD OF THE ARBITRATOR

Bulletin No. 18/1, posted on October 2, 1972, for the job of File Clerk – Equipment Department, St. John's, stated as the duties of the job: "Maintain General Filing system for the office of Supt. Equipment. Other clerical duties as required". The qualifications set out were. "Knowledge of CN Standard Correspondence filing system". Mr. Pumphrey applied for the job, and had greater seniority than the successful applicant. His application was rejected on the ground that he was unable to type.

Now there was no reference to typing ability in the qualification set out in bulletin No. 18/1. If this was indeed a "necessary qualification", then the Company was in violation of Article 6.4 of the collective agreement, which provides as follows.

6.4 When required, bulletins will be issued on the 15th and last day of each month (should such days fall on a Saturday, Sunday or legal holiday, bulletin will be issued on the following working day). All bulletins will show classification and location of the position, general description of the duties, necessary qualifications where applicable, rate of pay, hours of assignment, assigned rest days and, if temporary, the approximate duration, and shall be posted for seven calendar days in places accessible to all employees affected. Copies of all bulletins issued under this Article shall be furnished to the Local Chairman.

As far as bulletin No. 18/1 is concerned, it seems clear that Mr. Pumphrey's application was rejected on improper grounds. If the job to be done was indeed the job that was posted, then he would appear to have been entitled to it, at least as against a junior applicant. At the time the job was posted it seems that it included some typing, but this was of a minor nature incidental to a filing clerks duties, and the skills of a typist could not properly be said to be among the requirements of the job. As of the time of the job posting, then, it would be my conclusion that the grievor was improperly denied the job and that his grievance should succeed.

A "Job Data and Task List" prepared by the Company as of March 1973 shows that some one and one-quarter hours of typing of reports is require each day on the job in question, in addition to some three-quarters of an hour said to be required typing index cards. Having regard to this volume of work, it would seem that typing should be specified as one of the duties of the job, and an ability to type to a reasonable degree of efficiency could properly be stated as a requirement. The "Job Data and Task List", however, incorporates changes made in the job by the Company after the filling of the bulletined job. Subsequent changes in job requirements obviously cannot be held against an employee in a claim relating to the situation before the changes were made. Where the job claimed no longer exists in its original form, however, then the employee's recovery must be limited to his loss in respect of the work to which he was entitled. He is not entitled to promotion to a job for which he is not qualified.

The Company did acknowledge that typing should have been shown as a necessary qualification on the bulletin. Whether or not the ability to type could properly have been required at the time bulletin No. 18/1 was posted it did, as I have noted, subsequently become a requirement. Whether as a consequence of job changes or not, the job was re-advertised, and it would appear that the grievor did not meet the requirements of the second bulletin. The bulletin was posted on December 15, 1972, and it has not been shown that the grievor was entitled to that job.

The requirement of typing ability, and the extent to which typing forms part of a File Clerk's duties appears to vary from one File Clerk's job to another, and, as in the case of the position in question, appears to vary over the course of time. The determination of the instant case is made only having regard to the particular circumstances. For the reasons given, it is my conclusion that the grievor's application for the job listed on bulletin 18/1 was denied on improper grounds, but that he was not entitled to the job subsequently bulletined on December 15, 1972. It is accordingly my award that the grievor be reimbursed for any loss of earnings he may have suffered between October 2, 1972 and December 15, 1972 as a result of the improper refusal of his application under bulletin 18/1. I retain jurisdiction to deal with any question as to the amount of any compensation to which the grievor may be entitled.

(signed) J. F. W. WEATHERILL

ARBITRATOR