

CANADIAN RAILWAY Office OF ARBITRATION

CASE NO. 445

Heard at Montreal, Tuesday, June 11, 1974

Concerning

CANADIAN National RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL
WORKERS

DISPUTE:

The Brotherhood claims that the Company violated Article 13.3(a) when it did not allow either Ticket Clerk A.A. Firth or C.D. Adams to displace Ticket Clerk V.J. Maltais on August 17, 1973 and similarly not allow Ticket Clerk C.D. Adams to displace Ticket Clerk V.J. Maltais on August 23, 1973.

JOINT STATEMENT OF ISSUE:

On August 17, 1973 Ticket Clerks A.A. Firth and C.D. Adams both attempted to displace Ticket Clerk V.J. Maltais at Campbellton, N.B. but were disqualified from doing so by the Company for not having the necessary fluency in the French language to meet the demands of the customers during the hours of Mr. Maltais' assignment. Mr. Adams also attempted to displace on Ticket Clerk Maltais' position on August 23, 1973 and was again disqualified by the Company for the same reason. The Brotherhood claims that in disqualifying Messrs. Firth and Adams the Company is in violation of Article 13.3(a). The Company denies this claim.

FOR THE EMPLOYEES: FOR THE COMPANY:

(sgd.) J. A. PELLETIER (sgd.) G. H. BLOOMFIELD

NATIONAL VICE PRESIDENT Assistant VICE PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

P. A. McDiarmid – System Labour Relations Officer, Montreal

D. Pelrine – Senior Labour Relations Assistant, Moncton

P. Monast – Manager, Passenger Rules & Service, Campbellton

And on behalf of the Brotherhood:

W. C. Vance – Representative, Moncton

J. D. Hunter – Regional Vice-President, Toronto

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AWARD OF THE ARBITRATOR

Article 13.3 (a) of the collective agreement provides as follows:

13.3 An employee whose position is abolished or who is displaced from his permanent position may:

(a) Displace a junior employee in his own seniority group, on a temporary or permanent position, for whose position he is qualified,
or

Traffic Clerk Maltais was in the same seniority group as the grievors and they (or at least one of them), being senior, would be entitled to displace him provided they were qualified for his position. As ticket clerks themselves, their general qualifications for the job are not in question. Mr. Maltais' bulletined position, however, included the requirement that he be able to deal with customers in French. This requirement was, of course, a proper one, and in this respect some of the remarks made in **Case No. 257** may be of interest.

The reasons which led the Company to bulletin the position as one requiring the ability to deal with customers in French are not, I think, material in this case. The fact is that it was, quite properly, bulletined that way and the question in this case is whether the grievors met that requirement. The evidence before me requires the conclusion that they could not. They had, apparently with success, taken seventeen-day courses in French for train crews. A similar course for station personnel has, it seems, been developed recently, but the grievors have not had the benefit of that. I would not belittle in the least the value of the course taken by the grievors, or of their own efforts to deal with customers in French as the need arose. I note as well that the grievors were, at times, on duty alone as ticket clerks, and that on such occasions it may have been necessary for them to deal with customers in French. An ability to get by in this way, however, is not the same as an ability to deal well in a language, or to be fluent in it. The evidence, including the direct evidence of a knowledgeable bilingual supervisor, requires the conclusion that the grievors could not deal with customers in French at that level of fluency which the customers and the Company would have the right to expect.

It may be that in the particular circumstances at that time, business was slow. For this very reason, however, the sort of conversation which might be required of the ticket clerk would go beyond that of routine ticket sales, and would require a higher level of fluency in French than that so far achieved by the grievors.

For the foregoing reasons, it must be my conclusion that the grievors were not qualified for the position in question. Accordingly the grievances are dismissed.

(signed) J. F. W. WEATHERILL

ARBITRATOR