

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 605

Heard at Montreal, Wednesday, March 9, 1977

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Claim by Mr. G. Nagle for position of Ticket Salesman, advertised by Advice Notice dated July 15, 1976 and for loss of wages because of the non-appointment.

JOINT STATEMENT OF ISSUE:

Mr. Nagle was denied the position of Ticket Salesman because the Company claimed he did not possess the necessary qualifications.

The position was awarded to the next senior applicant, whom the Company claimed was fully qualified.

The next senior applicant, Mr. P.E. Whelan, prior to his ticket salesman appointment June 6, 1975 had similar previous work experience as did Mr. Nagle.

The Brotherhood charges discrimination against the Company and requested that Mr. Nagle be appointed and reimbursed for all loss of wages.

The Company denied the request.

FOR THE EMPLOYEE:

(SGD.) E. E. THOMS
GENERAL CHAIRMAN

FOR THE COMPANY:

(Sgd.) S. T. COOKE
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

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| A. D. Andrew | – System Labour Relations Officer, Montreal |
| A. E. Putnam | – Branch Manager, Passenger Sales, St. John's |
| N. B. Price | – Labour Relations Assistant, Moncton, |

And on behalf of the Brotherhood:

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| E. E. Thoms | – General Chairman, Freshwater, P.B. |
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AWARD OF THE ARBITRATOR

The job of Ticket Salesman is described as follows in the bulletin:

Sale of Tickets, making reservations, Ticket abstracting and other related duties.

The qualifications are set out as follows:

Thorough knowledge of passenger schedules, routes, tariffs and ticket office accounting procedures, legible handwriting and neat appearance.

Article 6.7 of the collective agreement, which governs this matter, 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 Company considered the application for the job and determined that the grievor was not qualified for it; that is, that he was not qualified to perform the work without a training period. It does not appear to be seriously contended that this determination was wrong, certainly there is no material before me on the basis of which I could properly conclude that the grievor was in fact qualified for the job. The Company's judgment as to the grievor's qualifications therefore stands.

The Union's contention is that because the Company had, under an earlier bulletin, appointed an unqualified employee, it was somehow obliged to appoint the grievor in this case because of his seniority and despite his lack of qualifications. There may be several reasons why an unqualified employee would be appointed to a job. One proper reason would be that there were no qualified employees available. An improper reason would be some sort of personal favoritism, for example. In neither case, however, would the appointment of an unqualified person to a job at one time have the effect of altering the collective agreement so as to require the appointment of an unqualified person on some later bulletin. Past practice cannot alter the terms of a collective agreement, or create an ambiguity where none exists. Article 6.7 is not ambiguous. It creates an entitlement to appointment to senior qualified persons applying on a bulletin. Here, the grievor, while senior, was not qualified. The person who was appointed was qualified. The grievor was not, therefore, entitled to the job, and the Company did not violate the collective agreement in appointing the junior man in this case.

For the foregoing reasons the grievance must be dismissed.

(sgd.) J.F.W. WEATHERILL
ARBITRATOR