

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 670

Heard at Montreal, Tuesday, September 12, 1978

Concerning

NORTHERN ALBERTA RAILWAYS CO.

and

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

EX PARTE

DISPUTE:

Violation of Articles 5.1 and 6.7 of the Collective Agreement by appointing a Junior person as Travelling Representative.

EMPLOYEE'S STATEMENT OF ISSUE:

G. Kushneryk and others applied for the position of Travelling Representative, Dunvegan Yards, effective August 1, 1977. He and the others were denied the position on the basis that they did not meet certain requirements, and the position was awarded to a junior employee.

FOR THE EMPLOYEE:

(SGD.) D. C. DUQUETTE
GENERAL CHAIRMAN

There appeared on behalf of the Company:

M. Yorston – Labour Relations Officer, Montreal
R. A. Lloyd – Operations Manager, Edmonton

And on behalf of the Brotherhood:

D. C. Duquette – General Chairman, Montreal
C. Gribbons – Director of Information Services, Montreal

AWARD OF THE ARBITRATOR

Articles 5.1 and 6.7 of the collective agreement are as follows:

- 5.1** The right of promotion and seniority of employees within their seniority group will extend over the Northern Alberta Railways and will be governed by merit, fitness and ability. Where these are sufficient, the senior employee will be given preference.
- 6.7** When a vacancy occurs, the Operations Manager will fill same by appointing the senior man who, in his opinion, is entitled to it, but this will not prevent any employee senior to the man so appointed in his classification claiming his right to the position under Article 5.1 hereof, provided he files his protest within ten calendar days after the appointment has been bulletined as above. Should any question arise as to the senior applicant receiving the appointment to any one of the more important schedule agencies, an effort will be made by the Company Officers and the Local Chairman to reach a decision, failing which the latter may refer the case to the General Chairman to handle through the usual channels.

In the instant case a vacancy occurred and a number of employees applied for it. Mr. Kushneryk was the senior applicant. If Mr. Kushneryk had the "merit, fitness and ability" to perform the job, then it would appear from Article 5.1 that he was entitled to it, although it is to be borne in mind that under Article 6.7 it is the opinion of the Operations Manager which governs, subject to the employee's right of grievance.

The job bulletin set out a number of qualifications which the Company required of a successful candidate for the job. The Operations Manager interviewed the grievor on his application and formed the opinion that the grievor was not qualified to perform the job. There is nothing to support any suggestion that the Operations Manager acted arbitrarily or that he sought to discriminate unfairly against the grievor. The question to be determined, under this collective agreement, is whether, on objective considerations, the opinion of the Operations Manager was so clearly wrong that it must be set aside.

From the material before me, there were proper grounds on which the Operations Manager could rely in reaching the opinion he did. Of the six requirements set out on the bulletin the grievor was considered qualified, or capable of being qualified within a short time, with respect to three. The Company does not appear to have taken a rigid view of the matter but to have given the grievor credit not only for past experience, but also for the potential development of the human qualities called for by the job. Rather, the decisive consideration, in assessing the grievor's qualifications, was his lack of knowledge or lack of experience in certain specific areas felt to be of considerable importance to the job. The job posting called for "complete knowledge and understanding of AAR car loading rules", for "knowledge of accounting procedures", especially as relating to On Hand Representatives, and non-carload traffic, and for "knowledge and understanding of Freight and Express loss and damage rules and procedures". The grievor was an experienced employee, and while he had some knowledge of a variety of jobs and would likely have been able to develop his knowledge of the areas referred to, he was not fully knowledgeable in those areas, and the Operations Manager's opinion cannot be said to have been unreasonable.

Apart from the foregoing, there exists a memorandum of agreement dated September 1, 1972 which deals specifically with the job in question. Under that agreement, the Company may appoint from outside the Union ranks where, in the opinion of the Company, no applicant from the clerical and operator classification meets its standards for the Job. The effect of this, in my view, is to underline the discretion which the Company is given, in that it is its opinion which governs. I do not consider that this is an absolute discretion, but it can at least be said that such opinion must be shown to have been clearly wrong, if a grievance such as this is to succeed.

In the instant case the Operations Manager's opinion has not been shown to be wrong, and it cannot be concluded that the grievor was entitled to the job in question pursuant to the collective agreement.

Accordingly, the grievance is denied.

(signed) J. F. W. WEATHERILL
ARBITRATOR