CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 703

Heard at Montreal, Tuesday, April 10th, l979

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claim that the Company violated Article 29.3 of Agreement 5.1 when it refused to negotiate a rate of pay for a position of Clerk-Stenographer established at the Express Terminal, Lachine, Quebec.

JOINT STATEMENT OF ISSUE:

A position of Clerk-Stenographer was advertised on 4 October 1978 with a bilingualism requirement. The Brotherhood alleged that because of this requirement, the Company should have agreed to its request to negotiate a rate of pay for this position, and by refusing, it violated Article 29.3 of Agreement 5.1.

The Company denied the claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. D. HUNTER	(SGD.) S. T. COOKE
NATIONAL VICE-PRESIDENT	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

C. L. LaRoche – System Labour Relations Officer, Montreal
P. J. Thivierge – Regional Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

G. Thivierge – Regional Vice President, Montreal
I. Quinn – Accredited Representative, Montreal

AWARD OF THE ARBITRATOR

Article 29 of the collective agreement provides, in its entirety, as follows:

> **WAGE RATES FOR NEW JOBS**
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> **29.1** When a bona fide new job or position is to be established which cannot be properly placed in an existing classification by mutual agreement, management will establish a classification and rate on a temporary basis.
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> **29.2** Written notification of the temporary rate and classification will be furnished to the Regional Vice-President of the Brotherhood.
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> **29.3** The new rate and classification shall be considered temporary for a period of 60 calendar days following the date of notification to the Regional Vice-President of the Brotherhood. During this period (but not thereafter) the Regional Vice-President of the Brotherhood may request the Company to negotiate the rate for the classification. The negotiated rate, if higher than the temporary rate, shall be applied retroactively to the date of the establishment of the temporary classification and rate, except as otherwise mutually agreed. If no request has been made by the Brotherhood to negotiate the rate within the 60 calendar day period, or if no grievance is filed within 60 calendar days from the date of notification to the Regional Vice-President of the Brotherhood, or upon completion of negotiations, as the case may be, the temporary classification and rate shall become a part of the wage scale.
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> **29.4** If the Company and the Brotherhood are unable to agree on a classification, and rate for the new job, the disputed rate and/or classification may be treated as a grievance. The grievance may be taken up at Step No. 3 of the grievance procedure and if it is not resolved it may be referred to an arbitrator under Article 25.
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> **29.5** It is specifically agreed that no arbitrator shall have the authority to alter or modify the existing classifications or wage rates but he shall have the authority, subject to the provisions of this Agreement, to determine whether or not a new classification or wage rate has been set properly within the framework of the Company's established classification and rate setting procedure.

The position in question was established when the Company's Express Division structure was reorganized. There is no doubt that it is reasonable for the Company to require that the person assigned to the job be bilingual. The issue is simply whether or not, by reason of that requirement, the Job is a new one for which a rate should be negotiated.

There is no suggestion that, apart from the matter of bilingualism, the Job differs in any substantial or significant way from others in that classification. The case appears to be one where a requirement of bilingualism is added to what might otherwise be considered the "normal" requirements of a job in that classification.

The case is, I think very similar to **Case No. 281**, where the job in question was that of Stenographer, and where the Union took the position that bilingualism could not be a proper requirement of a job in that classification. That may be regarded as the equivalent of saying that to add the requirement of bilingualism is to create a new job.

In the instant case, as in **Case No. 281**, it is my view that as a general matter, it would be correct to say that the addition to an existing classification of a requirement of bilingualism is to create a new Job for which a new rate should be negotiated. In this case, as in that, it is my view that the requirement of bilingualism constitutes a "a substantial additional qualification" for the Job.

The Company's answer to this is, as it was in **Case No. 281**, two-fold: first, it is said that the position of Clerk-Stenographer has been advertised as including a requirement of bilingualism on a number of occasions in the past. That is not, in my view, a sufficient answer: if in fact the Company is requiring employees to perform work outside of their classification then employees may grieve, even though it would be too late to recover in respect of past circumstances.

Secondly, the Company argues that the parties accepted bilingualism as a proper qualification for the job of Clerk-Stenographer when the rates were negotiated. This argument appears to me to be well-founded. It is no doubt the case that in many and indeed most particular positions within the classification of Clerk-Stenographer,

bilingualism has not been a requirement. In some cases it has been referred to as an "asset", and in some cases there has been a requirement to perform the job, specifically, in one or the other of the official languages.

Not all of the qualifications which might properly be required of a Clerk-Stenographer, however, are qualifications which the Company may require the employee to exercise in any particular position within that classification. In some bulletins, depending on the circumstances, it would be reasonable and proper to require that the successful applicant speak French, in others, that he speak English, in still others, that he be bilingual. This latter requirement is, as l have indicated, of a different order, since it is a requirement to be qualified in two languages rather than one. But it is a requirement that has appeared in job bulletins from time to time, over the years, and had appeared at the time of the reclassification of 1967.

The position, it seems, is a new one at the particular location. The classification, however, is an established one and it is one which has, in some cases, included the requirement of bilingualism, since at least the time of reclassification. While, as I have indicated, I would consider the requirement of bilingualism to constitute a significant difference as between a position in the classification where that was required and a position in the same classification where it is not required, nevertheless l cannot find, in the light of the history of the content of the classification, that the requirement of bilingualism in the position in question constitutes the creation of a "new job" within the meaning of Article 29. The requirement of bilingualism, even though it may have been made in relatively few cases, was one of the possible requirements of jobs in the classification of Clerk- Stenographer at the time the wage agreement was made.

For the above reasons, it must be my conclusion that there has been no violation of the collective agreement, and the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR