

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 825

Heard at Montreal, Tuesday, April 14, 1981

Concerning

ONTARIO NORTHLAND RAILWAY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood claims the company violated Rules 12.1, 12.3, 12.6 and 12.8 when it did not award a bulletined position of Chef to R. Andrunyk.

JOINT STATEMENT OF ISSUE:

On October 6, 1980 the company posted a bulletin for a number of positions including three Chefs. Mrs. C. Hazelwood was subsequently appointed to one of the Chef's positions. The Brotherhood claimed that Mr. R. Andrunyk who was senior to Mrs. Hazelwood on the seniority list, should have been awarded the position and requested his appointment thereto with payment for loss of wages and benefits from the effective date of the assignment.

The company denied the grievance.

FOR THE EMPLOYEES:

(SGD.) T. N. STOL
REPRESENTATIVE

FOR THE COMPANY:

(SGD.) R. O. BEATTY
GENERAL MANAGER

There appeared on behalf of the Company:

A. Rotondo – Manager, Labour Relations, North Bay
A. E. Telford – Passenger Services Supervisor, North Bay

And on behalf of the Brotherhood:

T. N. Stol – Representative, Ottawa
G. Brown – Local Chairman, North Bay
R. Andrunyk – Grievor

AWARD OF THE ARBITRATOR

Articles 12.1, 12.3, 12.6 and 12.8 of the Collective Agreement are as follows:

12.1 All employees will be given their choice of runs on general bid which will be posted twice a year. Dates of general bids will be the last Sunday in May and the last Sunday in October unless otherwise agreed locally. During the open period of general bids, assigned employees will remain on runs until the effective date of new assignments.

12.3 Vacancies in regularly assigned positions, temporary vacancies and newly created positions any of which are known to be of 30 calendar days' duration or more, shall be bulletined within five calendar days of the vacancy occurring except as provided for in Article 12.1.

12.6 Assignments will be made by the Company based on seniority, training, fitness and ability and those selected will be required to undergo practical tests, write any rules and/or examinations required unless previously qualified in the position. Names of employees assigned to positions will be posted within five days, exclusive of Saturdays, Sundays and general holidays, giving reference to dates and numbers of original bulletins.

12.8 If insufficient or no bids are received for vacancies, the Company will fill the assignments as follows:

- (i) Junior qualified employees from the spare list will be assigned; or,
- (ii) In the event there are no qualified employees on the spare list the senior qualified laid-off employees will be assigned in accordance with Article 13.13; or,
- (iii) In the event there are no qualified employees on the spare list or laid off, the junior qualified assigned employees will be placed on the assignments provided an increase in rate is involved and only until other more junior employees have been trained.

The material before me does not reveal any violation of Article 12.1. Whether or not there had been, with respect to earlier assignments, a violation of Article 12.3 is not, I think, material to the issue raised in this grievance, namely the entitlement of Mr. Andrunyk to the job posted on October 6, 1980. Further, since there were bids for the job, the provisions of Article 12.8 do not apply. The issue, therefore, is whether or not the grievor was entitled to the assignment pursuant to Article 12.6. Whether or not there had been some irregularity in the successful applicant's having been hired by the Company some time before the posting is a distinct question and not one which is properly dealt with in a grievance asserting the grievor's qualifications for a particular job.

The Company posted for three positions of Chef. One of these was awarded to an employee junior to the grievor, and the grievor alleges that he was entitled to that position. Such a claim is to be decided in accordance with the provisions of Article 12.6. That Article sets out four criteria for assignment to a bulletined job: seniority, training, fitness and ability. As among these criteria, the grievor's claim is superior to that of Mrs. Hazelwood only in that he has more seniority. From the material before me it is clear that in respect of the other criteria Mrs. Hazelwood, by virtue of her much greater experience, was better qualified than the grievor.

It was argued that the grievor was in fact qualified for the job because of his knowledge of the procedures appropriate to the preparation of the dishes served on the train in question, and because he had worked in the job for some twelve shifts. As with any skilled job, however, theoretical knowledge is one thing and its practical application is another. Considerable experience in the practical aspects of the craft is properly considered a requisite to being "qualified".

In the instant case, the Company had put forward, since 1977, the requirement of an "Ontario certificate", now known as a "Cook II" certificate, or its equivalent, as an indication of qualification for a position of Chef. The grievor does not have that certificate or its equivalent, nor does he have the experience which would permit him to write the tests for such certificate. Mrs. Hazelwood, by virtue of lengthy experience, does have the equivalent of such a certificate. Whether or not the Company had, on some other occasions, been driven to seek unqualified persons to work in the classification does not now prevent it from selecting qualified ones when they are available.

While the grievor was, no doubt, partially qualified for the job, he did not meet the standard reasonably required and did not have the experience equivalent to it. That being the case, the Company was not required to appoint him to the job in question. For these reasons, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR