

CANADIAN RAILWAY OFFICE OF ARBITRATION CASE NO. 1296

Heard at Montreal, Tuesday, November 13, 1984

Concerning

CANADIAN NATIONAL RAILWAY COMPANY (TERRA TRANSPORT DIVISION)

and

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

DISPUTE:

Request of Mr. H. King of St. John's, Newfoundland to be awarded the position of Senior Engineering Clerk.

JOINT STATEMENT OF ISSUE:

Mr. King applied for the bulletined position of Senior Engineering Clerk. The Company subsequently awarded the position to an employee junior in seniority. The Company stated that Mr. King lacked the qualifications required and has denied him the position.

The Brotherhood contends that Mr. King is qualified for the position and therefore the Company has improperly denied him the position of Senior Engineering Clerk in violation of article 6.7 of Agreement 6.1. The Company disagrees.

FOR THE BROTHERHOOD:

(SGD.) M. J. WALSH
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. R. GILMAN
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS.

There appeared on behalf of the Company:

W. W. Wilson	– Manager Labour Relations, Montreal
S. A. MacDougald	– Labour Relations Officer, Montreal
J. Brennan	– Employee Relations, St. John's
D. Smith	– Engineering Department, St. John's
G. Yeomans	– Computer Systems Analyst, Montreal

And on behalf of the Brotherhood:

M. J. Walsh	– General Chairman, St. John's
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AWARD OF THE ARBITRATOR

It is common ground that the grievor, Mr. H. King, was by-passed for a less senior employee for the bulletined position of Senior Engineering Clerk. Accordingly, his Trade Union submits that the Company has violated article 6.7 of Agreement 6.1:

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 job requirements of the bulletined position indicated that the job applicant "must have successfully completed "Berms Training" and be qualified and knowledgeable in all aspects of the Berms program".

The grievor clearly did not qualify on this aspect of the job requirements. Indeed, the evidence disclosed that some time prior to the posting the Company had extended to its employees the opportunity to take a training course in "The Berms System". Mr. King attempted to take advantage of that opportunity but failed the screening test that would have enabled him to enter the programme. Nothing has been adduced in the materials that would cause me to question the honesty and integrity of the Company's judgment in this regard. In short, there is no doubt that the Company concluded, for good reason, that the grievor was not qualified for the position.

The only submission that was advanced to rebut the Company's position was the fact that the grievor successfully completed a training course on the McCormack and Dodge Accounts Payable System. It was alleged that because the grievor could operate that particular computer he obviously, within the trial period afforded under article 6.12, could familiarize himself with the "Berms System". The Trade Union made no effort to establish the similarities of the two computers in order to enable me to reach the conclusion that the grievor, albeit requiring familiarization, was nonetheless qualified to operate the Berms programme. On the other hand, the Company adduced evidence establishing drastic differences between the two machines. The Company's brief demonstrated that the Berms computer performs numerous and different functions that would require special training. In short, I simply have not been satisfied that the grievor is qualified for the Senior Engineering Clerk's position. Indeed, the contrary has been shown.

As has been stated in the several CROA precedents, article 6.7 does not allow for a training period in order to enable an applicant for a job position, despite his or her seniority, to qualify for a job. Accordingly, I cannot find that the Company was in breach of that provision. The grievance is accordingly denied.

(signed) DAVID H. KATES
ARBITRATOR