

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1448

Heard at Montreal, Wednesday, December 11, 1985

Concerning

CANADIAN NATIONAL RAILWAYS

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Request of Mr. M. Colligan of Montreal, Quebec to be awarded the position of Registration Clerk.

JOINT STATEMENT OF ISSUE:

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

The Brotherhood contends that Mr. Colligan should have been awarded the position and trained for three weeks under the provisions of Item 4 (b) of the Letter of Understanding dated 20 January 1984. The Company disagrees.

FOR THE BROTHERHOOD:

(SGD.) TOM MCGRATH
NATIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) D. C. FRAIEIGH
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
B. Tapp	– Manager Freight Claims Settlement, Montreal
M. Vaillancourt	– Employee Relations Officer, Montreal
A. E. Heft	– Labour Relations Officer, Toronto

And on behalf of the Brotherhood:

G. Côté	– Regional Vice-President, Montreal
M. Moretto	– Local Chairperson, Montreal

AWARD OF THE ARBITRATOR

The simple issue in this case is whether an employee who falls within the scope of the parties' Letter of Understanding dated January 20, 1984 was exempted from exhibiting the required "qualifications" for a bulletined position as a condition for being given an appropriate "training" period as provided in that document.

There is no dispute that the grievor fell within article 2(d) of the Letter of Understanding when he applied for the bulletined position of Registration Clerk at the Company's Consolidated Freight Claims Settlement Office at Montreal. Moreover, there is also no dispute that the grievor, as of the date he applied for the Registered Clerk's position, was not "qualified".

The question that must, of course, be answered herein is whether he had to be qualified (As article 12.12 of agreement 5.1 would normally require) in order to take advantage of "The Training Period" provided under article 4(b) of the Letter of Understanding. Or, from another perspective, if the grievor had to be "qualified", then the Company did not violate the provisions of the collective agreement in its awarding the Registered Clerk's position to a less senior employee.

As stated at the hearing, it is my opinion that the clear and plain meaning of the term "training" would suggest that an "unqualified" employee was intended to benefit from the parties' Letter of Understanding in order that he be allowed a training period in order to become qualified for a bulletined position. The provision of a training period for a candidate who is already qualified for a bulletined position would serve absolutely no useful purpose. Whereas, given the overall purpose of the Letter of Understanding in serving the needs of employees who had been declared redundant by virtue of the Company's decision to consolidate its Freight Claims Settlement Activities at Montreal, it seems that business sense dictates that any such training period would be designed to assist those employees who were clearly adversely affected.

It may very well be that the grievor became an unexpected beneficiary of the Letter of Understanding by virtue of his applying for bulletined position while located in the St. Lawrence Region. But so long as he fell under the scope of the Letter of Understanding, as was conceded by the Company, he was entitled to the fulcrum of benefits contained in that document inclusive of the training provisions.

Furthermore, it is my view that if the Company intended to restrict the benefits of article 4 of the Letter of Understanding to "qualified" candidates who simply might require a familiarization period in a newly awarded position, then more obvious language could have been used to communicate that notion.

In the light of the foregoing, the grievance succeeds. The Company is directed to provide the grievor with the benefits, as requested, of article 4 (b) of the Letter of Understanding. I shall remain seized.

(signed) DAVID H. KATES
ARBITRATOR