

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1478

Heard at Montreal, Tuesday, March 11, 1986

Concerning

ONTARIO NORTHLAND RAILWAY

and

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

EX PARTE

DISPUTE:

The Ontario Northland employed and worked Miss K. Ollivier on a position prior to having fully qualified as a Telegrapher by writing the UNIFORM CODE OF OPERATING RULES examination. This resulted in Miss Ollivier being placed on the spareboard seniority list ahead of two (2) previously qualified Telegraphers.

Alleged violation of collective agreement articles 6.11 B, 19.1 and 19.4.

BROTHERHOOD'S STATEMENT OF ISSUE:

On June 21, 1985 the Ontario Northland Railway issued instructions to Trainee Opr. K. Ollivier. In so doing the Union sighted violations of collective agreement articles 6.11 B, 19.1 and 19.4 as well as favouritism in the hiring process.

The Union appealed, requesting proper placement of the spare operators on the Spareboard Seniority List, reimbursement of lost wages if such existed, a letter from the Company assuring the employees this practice would not occur in future and such to be included in the collective agreement. That if Operator R.A. Armstrong had not been paid the training allowance of \$8.17 that this should be done.

The Company denied the appeal at Step 1. At Step 2 some assurance was given. No response was received at Step 3, nor to the Union's further letter of December 20, 1985 citing article 21.4 and requesting a Joint Statement of Issue.

FOR THE BROTHERHOOD:

(SGD.) STEVE C. RUTTAN

VICE-GENERAL CHAIRMAN,

There appeared on behalf of the Company:

A. Rotondo – Manager Labour Relations, North Bay

And on behalf of the Brotherhood:

S. C. Ruttan – Vice-General Chairman, Porquis

AWARD OF THE ARBITRATOR

The Company has undertaken to pay Operator R.A. Armstrong his training allowance of \$8.17 if its records confirm he was entitled to it under article 19.1 of the collective agreement.

The significant complaint in this case pertains to the appropriate designation of the seniority dates of G. Armstrong and S. Welsh in the light of the allegedly improper assignment of an operator's position to an "unqualified" trainee; namely, K. Ollivier. The submission was made that had Ms. Ollivier not been given the assignment it would have been extended to either Mr. Armstrong or Ms. Welsh. In this regard, it is common ground that these two employees had qualified as operators but were still trainees who were not covered by the collective agreement at the time the grievance arose.

It is also common ground that but for her failure to successfully complete an oral examination Ms. K. Ollivier had fulfilled all the prescribed course work that would entitle her to qualifications as an operator in accordance with UCOR requirements.

In resolving this dispute I am of the view that the Company under the collective agreement is the sole judge of the qualifications of trainees it elects to certify as suitable for carrying out bargaining unit responsibilities. Should it be in violation of the UCOR rules or the directives of a Government Agency in so doing then it obviously operates at its peril. But at arbitration I have no review powers over the Company's decision over whom it is prepared to hire or otherwise qualify as *bona fide* members of the bargaining unit.

Inasmuch as the two grievors in question were not members of the bargaining unit at the time the Trade Union's complaint arose any defect in the Company's response under article 21.4 to that complaint is also without merit.

Accordingly this grievance must be denied.

(signed) DAVID H. KATES
ARBITRATOR