

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1500

Heard at Montreal, Tuesday, April 8, 1986

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim of Painter Foreman J. E. Kirkham for the difference in rate of pay between the classifications of Painter Foreman and B & B Foreman during the periods 26 March to 6 April 1984 and 9 April to 19 April 1984.

JOINT STATEMENT OF ISSUE:

During the period 26 March to 6 April 1984 the Company assigned Carpenter E. Paquette to fill a temporary vacancy of B & B Foreman. During the period 9 April to 19 April 1984, the Company assigned Plumber G. Racine to fill the same temporary vacancy.

The Union contended the Company violated article 14.4(a) of Agreement 10.1 when Mr. Kirkham was not permitted to fill the temporary vacancy of B & B Foreman during the periods in question.

The Company disagrees with the Union's contention.

FOR THE BROTHERHOOD:

(SGD.) PAUL A LEGROS
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

T. D. Ferens – Manager Labour Relations, Montreal
J. Russell – System Labour Relations Officer, Montreal
A. Brunet – B&B Master, Ottawa

And on behalf of the Brotherhood:

P. A. Legros – System Federation General Chairman, Ottawa
R. Y. Gaudreau – Vice-President, Ottawa
W. Montgomery – General Chairman, Belleville
J. E. Kirkham – Grievor

AWARD OF THE ARBITRATOR

The grievor has grieved the Company's failure to assign him to a temporary vacancy in circumstances where he maintains he held both the seniority and the qualifications to fill the functions of B&B Foreman. The relevant provision of the collective agreement provides:

14.4 (a), Agreement 10.1

Except as otherwise provided below, temporary vacancies of less than forty-five calendar days required by the Company to be filled, in positions subject to being bulletined in accordance with Clause 14.1, **shall be filled by the senior qualified employee immediately available**, subject to the provisions of Clause 21.9. An employee who does not exercise his seniority to such temporary vacancy of less than forty-five days will not forfeit any seniority. (emphasis added)

The uncontradicted evidence indicated that the grievor has never qualified for the discharge of B&B foreman's duties by completing the necessary training course that would make him eligible for promotion or appointment to that position. What the evidence did establish was that on an intermittent basis in the past the Company assigned the grievor to fill B&B Foreman's duties where no other qualified employee was available. This experience, of course, does not *per se* make the grievor a qualified B&B Foreman.

Accordingly, if the grievor has not qualified for the temporary vacancy he has no standing under article 14.4 (a) to make a claim.

Only an employee who demonstrates the requisite seniority and qualifications can secure the nullification of an inappropriate assignment if it may be assumed that the Employer, in another aspect, violated article 14.4 (a). And, of course, in the absence of a grievance from an employee who might make a legitimate claim impugning the Employer's assignments there is nothing before me to warrant my altering any alleged violation of the collective agreement.

Accordingly, the grievance must be denied.

(signed) DAVID H. KATES
ARBITRATOR