

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1962

Heard at Montreal, Thursday, 12 October 1989

Concerning

**VIA RAIL CANADA INC.**

And

**CANADIAN BROTHERHOOD OF RAILWAY,  
TRANSPORT AND GENERAL WORKERS**

### **DISPUTE:**

Grievance on behalf of Ms. C. Odrowski, who was not awarded the position of Cost Control Clerk.

### **JOINT STATEMENT OF ISSUE:**

The bulletining of a new Cost Control Clerk position in Halifax resulted in no qualified applicants. The Corporation subsequently informed the Brotherhood of its intention to provide training on the position to the four senior applicants, following which a test would be given to identify a permanent incumbent as well as candidates for relief work.

The qualifying standards were set, requiring a minimum of 50%. The position was awarded to S.D. Cameron, the only employee to achieve a passing mark on the test.

The Brotherhood contends that Article 12.12 of Agreement No. 1 was violated as a result of the position being awarded to the junior applicant; furthermore, the Brotherhood alleges that it has been past practice to award new positions to the senior employee who had the minimum requisite of qualifications subject to the provisions of Article 12.16. The Brotherhood further alleges violation of Articles 12.17 and 13.6 when the grievor was not allowed the position.

The Corporation rejected the grievance stating that there had been no violation of Agreement No. 1.

**FOR THE BROTHERHOOD:**

**(SGD) TOM MCGRATH**  
NATIONAL VICE-PRESIDENT

**FOR THE CORPORATION:**

**(SGD) P. D. THIVIERGE**  
FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation

C. O. Pollock – Labour Relations Officer, Montreal  
C. O. White – Labour Relations Officer, Montreal  
S. Grebeldinger – Manager, Financial Control, T.M.C.

And on behalf of the Brotherhood:

T. Powell – Representative, Halifax

## **AWARD OF THE ARBITRATOR**

Article 12.12 of the Collective Agreement is as follows:

**12.12** 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 will be shown on the next bulletin.

It is common ground that in the instant case none of the four applicants who applied for the newly established position was qualified for it. The Corporation therefore decided to provide training to all four of them, at the conclusion of which they were tested to determine their qualifications based both on the training and on their general aptitude for work of the kind generally relating to the position. The thrust of the Brotherhood's position is that the work should have been assigned to the senior applicant in conformity with Article 12.16 which is as follows:

**12.16** An employee who is assigned to a position by bulletin, will receive a full explanation of the duties of the position and must demonstrate his ability to perform the work within a reasonable probationary period up to 30 working days, the length of time dependent upon the character of the work. Any extension of time beyond 30 working days shall be locally arranged. Failing to demonstrate his ability to do the work, he shall be returned to his former position without loss of seniority and the employee so displaced will be allowed to exercise his seniority. When an employee who has been assigned to a position by bulletin fails to demonstrate his ability to perform the work, the position will be rebulletined.

The Arbitrator cannot accede to the Brotherhood's submission. Article 12.16 plainly contemplates the entitlement of a successful applicant for a bulletined position to a reasonable period of orientation and adjustment to the new job. It does not speak to the right of competing employees to assume a bulletined position. That is determined by the language of Article 12.12. The Brotherhood has not been able to point the Arbitrator to any provision which suggests that where, initially, the Corporation is unable to find any qualified applicants it must, effectively, award a position to a senior unqualified applicant. There is, in the Arbitrator's view, nothing in the Collective Agreement to prevent the Corporation from following the course of action which it did, namely to identify a group of senior unqualified applicants and to provide them with training and a test to determine if they meet the basic qualification. That is what was done in the instant case, and the person awarded the position of Cost Control Clerk was the only one to qualify in accordance with the test administered. Having reviewed the material I am satisfied that the test was fair and reasonable in all of the circumstances, and that there is no suggestion in the material before me that either its contents or the process of administration was arbitrary, discriminatory or in bad faith.

On the whole of the evidence the Arbitrator is satisfied that the Corporation did comply with Article 12.12, and that the new position was awarded to the senior qualified applicant. No violation of the Collective Agreement being disclosed, the grievance must be dismissed.

October 12, 1989

**(Sgd.) MICHEL G. PICHER**  
ARBITRATOR