

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2022

Heard at Montreal, Tuesday, 8 May 1990

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The reclassification of a position of Industrial Services Clerk in the Gordon Yard Car Shop at Moncton, New Brunswick.

JOINT STATEMENT OF ISSUE:

On March 4, 1987, Mr. R.L. Moores commenced pre-retirement vacation. On March 3, 1987, Company and Brotherhood representatives met to discuss the reclassification of this position to reflect the duties which were being performed at the time Mr. Moores retired.

Following these discussions the position was reclassified as Data Entry Clerk and was advertised as such to the membership of the Brotherhood on March 3, 1987.

The Brotherhood has contended that the Company has violated the provisions of paragraph 21.7, Article 21, Agreement 5.1 because the Company representative at the March 3, 1987 meeting was not the "proper officer of the Company" as prescribed by paragraph 21.7 and thus did not have the authority to represent the Regional Vice-President of the Company.

The Company disagrees.

FOR THE BROTHERHOOD:

(SGD) TOM MCGRATH
NATIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD) W. W. WILSON
FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

M. M. Boyle – Manager, Labour Relations, Montreal
W. D. Agnew – Human Resources Officer, Moncton

And on behalf of the Brotherhood:

G. Murray – Regional Vice-President, Moncton

AWARD OF THE ARBITRATOR

The evidence before the Arbitrator establishes that at the March 3, 1987 meeting the Company was represented by Mr. W.D. Agnew who, at all material times, was an Employee Relations Officer for the Equipment function in Moncton. It is not disputed that he reported to the Regional Manager of Employee Relations, as did the Manager of Labour Relations. The evidence of Mr. Agnew establishes that on some two other occasions he had represented the Company in Article 21.7 discussions without any apparent objection by the bargaining agent.

Article 21.7 of the Collective Agreement does not identify the officer of the Company who is to engage in the process of discussion contemplated within it. That article provides as follows:

21.7 No change shall be made in agreed classifications or basic rates of pay for individual positions unless warranted by changed conditions resulting in changes in the character of the duties or responsibilities. (sic) When changes in classifications and/or basic rates of pay are proposed, or when it is considered that a position is improperly classified or rated, the work of the positions affected will be reviewed and compared with the duties and responsibilities of comparable positions by the **proper officer of the company and the Regional Vice-President of the brotherhood**, with the object of reaching agreement on revised classifications and/or rates to maintain uniformity for positions on which the duties and responsibilities are relatively the same. (emphasis added)

The Brotherhood relies, in substantial part, on the fact that in the past the Company has generally been represented in Article 21.7 discussions by the Manager of Labour Relations or his designate, acting on behalf of the Vice-President of the Company. I can find no substantial basis to support the Brotherhood's argument that the use of those officers, on whatever basis in the past, can be asserted as foreclosure of the Company's ability to delegate a person of the rank and responsibility of Mr. Agnew to fulfill the functions of the "proper officer of the company" within the meaning of Article 21.7 of the Collective Agreement. Absent any indication in the language of the Collective Agreement restricting the Company's discretion to determine the identity of the proper officer in the circumstances, or any undertaking that would amount to an estoppel in that regard, I cannot find that there has been any violation of the article.

For these reasons the grievance must be dismissed.

May 11, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR