

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3057

Heard in Montreal, Tuesday, 8 June 1999, 9 February and 16 March 2000,

concerning

VIA RAIL CANADA INC.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

The Corporation's Locomotive Engineer Training Selection Process.

BROTHERHOOD'S STATEMENT OF ISSUE:

On June 12 1998 the Brotherhood and the Corporation signed a Crew Consist Adjustment Agreement which, amongst other things, provided an option for Conductors, Assistant Conductors and Yardmasters to apply for training to become a locomotive engineer.

On or about July 1st the Corporation telephoned numerous conductors and assistant conductors and advised them that they had been selected for the first step of the locomotive engineers' training selection process. Within 24 hours a substantial number were telephoned again and informed that they had not been selected and that they were to return to CN or were laid off as the case may be.

This action resulted in grievances being filed by the Brotherhood requesting that all applicants be treated in the same unprejudiced manner and that all VIA employees be allowed all steps of the selection process to ensure accountability and fair play as the Corporation had already hired outside engineers from newspapers ads during negotiations. The Corporation ignored the grievances and proceeded to the next steps of the selection process with their chosen candidates which included written mechanical aptitude tests and a panel type interview.

The Brotherhood participated in the panel interview (the final step) and successful candidates went on to classroom training and subsequently to the practical on the job portion of their training.

During the selection process it was discovered that different standards and grading of mechanical tests were used in Montreal than in Toronto which resulted in the standards being lowered from 45-50 points to generate the required candidates needed in Montreal.

Once the standards were lowered, additional Montreal and Toronto based employees were selected. Seniority rules were ignored and people who now qualified under the lower standard were then advised of new or different reasons that they were being by-passed by junior employees.

Local grievances were filed in relation to a variety of complaints surrounding the selection process. Several weeks later letters were sent out to rejected candidates inviting them to make appointments for feed back interviews to which their Union representatives were invited to observe and record reasons for denial.

In some case the rejected applicants were sent home and advised to return to CN. In other cases these employees were simply laid off and are facing a severance. In a few instances some have accepted work in a different bargaining unit within the Corporation.

The Brotherhood contends that the selection process used by the Corporation did not contain the spirit and intent of the June 12th agreement and that employees were in fact not granted equal opportunities in the area of potential locomotive engineer training.

We have concluded that there are 2 categories of complainants in this policy grievance. To clarify and avoid confusion, the Brotherhood would advance and present this grievance with the following groups in mind.

1. Employees who were initially bypassed without explanation and denied all steps of the selection process.
2. Employees who were selected and qualified after the standards were lowered but were rejected ahead of people junior to them who also qualified after the standards were lowered.

The Brotherhood is seeking that employees who were initially denied be given the right to the selection process and that people who were selected and later rejected following “lowered standards” be given their right to continue on in the process.

CORPORATION’S STATEMENT OF ISSUE:

The Corporation and the Union reached an agreement for the implementation of the Crew Consist Adjustment (the “Crew Consist Adjustment Agreement”) on June 12, 1998. It provided for, among other items, that a joint locomotive engineer training program would be jointly developed and implemented by the Corporation and the Brotherhood.

It also provided that those conductors who applied for, qualified and obtained positions as locomotive engineers would receive the same rate of pay.

The selection process for the locomotive engineer training was a three stage process; work record review, aptitude testing and interview. If an applicant was successful at the prior stage they would proceed to the next level. In the final interview, there was a Union representative present who agreed in the decision reached.

Those candidates who were unsuccessful upon review of their work record were advised of the decision as quickly as possible. Initially the Corporation was not able to review the decision personally with each unsuccessful candidate. However, subsequently, all those who were unsuccessful were given the opportunity to personally review their application and the decision made.

An issue did arise as to the administration of the aptitude testing for the candidates. In order to ensure fairness, the standard needed to progress to the next stage was adjusted to allow more candidates the opportunity to qualify for the locomotive engineer training.

All candidates who applied were given a full and unprejudiced consideration. The Corporation administered the process in a fair and equitable manner to all applicants but unfortunately not all who applied were successful.

The Corporation asks that this grievance be dismissed.

FOR THE BROTHERHOOD:

(SGD.) J. TOFFLEMIRE
GENERAL CHAIRMAN

FOR THE CORPORATION:

(SGD.) E. J. HOULIHAN
FOR: DIRECTOR, HUMAN RESOURCES & LABOUR RELATIONS

There appeared on behalf of the Corporation:

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| E. J. Houlihan | – Senior Manager, Labour Relations, Montreal |
| J. Lafleur | – Counsel, Montreal |
| B. E. Woods | – Director, Human Resources & Labour Relations, Montreal |
| G. Benn | – Labour Relations Officer, Montreal |

And on behalf of the Brotherhood:

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| J. L. Shields | – Counsel, Ottawa |
| G. Hallé | – Canadian Director, Ottawa |
| J. Tofflemire | – General Chairman, Toronto |
| M. Grieve | – Vice-General Chairman, Toronto |
| G. Desjardins | – Vice-General Chairman, Montreal |

And on behalf of the Observer, Canadian National Railway Company:

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| J. Coleman | – Counsel, Montreal |
| J. D. Pasteris | – Manager, Labour Relations, Montreal |
| P. Provonost | – Counsel, Montreal |

And on behalf of the Observer, United Transportation Union:

M. A. Church	– Counsel, Toronto
W. G. Scarrow	– Vice-President, Ottawa
M. Kronick	– Counsel, Toronto
R. LeBel	– General Chairman, Quebec

AWARD OF THE ARBITRATOR

It was agreed between the parties that the grievances relating to Locomotive Engineer Training, and the selection process attached to it, would be dealt with on the basis of several preliminary issues being heard and disposed of initially by the Arbitrator, followed by hearings on the merits of individual grievances of certain of the employees affected. This award is therefore intended to deal with the preliminary issues identified by the parties arising from the policy grievance filed by the Brotherhood.

In the spring of 1997 the Corporation announced an initiative whereby it intended to abolish all conductor and assistant conductor positions on its passenger trains. Its initiative involved the transfer of certain of the responsibilities and conductors and assistant conductors to locomotive engineers, as well as to on-board service employees. The Corporation's change also involved the merging of its two running trades bargaining units into a single unit, as approved by a decision of the then Canada Labour Relations Board on July 11, 1997. The Brotherhood emerged as the exclusive bargaining agent for employees in the newly established position of operating engineer following a run-off vote against the United Transportation Union conducted by the Canada Labour Relations Board.

On June 12, 1998 the Brotherhood and the Corporation executed a Crew Consist Adjustment Agreement. That document deals with a number of aspects of the change in the Corporation's operations. Among the terms of the agreement are a number of provisions relating to locomotive engineer training. Among other things, article 6 of the Crew Consist Adjustment Agreement contemplates that a locomotive engineer training program was to be jointly developed by the Corporation and the Brotherhood. To that end a joint training program document was signed between the parties on May 21, 1998, shortly in advance of the implementation of the job abolishments and reorganization effective July 1, 1998.

Article 4 of the May 21 document notes, in part:

VIA qualified conductors, assistant conductors and (yardmasters) are the preferred employees to be selected for this locomotive engineer training program.

The same article provides for a six-step basic aptitude test, comprised of the following:

Steps:

1. Background and experience. (Personal and discipline records)
2. Meet medical standards
3. Meet physical requirements of the locomotive engineer's position Example: hand brake application etc. (New Employee)
4. Mechanical aptitudes
5. Learning skills. (Thomas Profile Report, to be used only as a tool for guidance purposes)
6. Interview (BLE to be involved)

Article 13 of the Crew Consist Adjustment Agreement deals with the specific case of conductors and assistant conductors, as well as yardmasters, who retain status as CN employees under the terms of a memorandum of agreement dated March 6, 1987 which governs the right of running trades employees in VIA to return to work at CN, in accordance with their seniority within that company. That article reads, in part, as follows:

13 Conductors, Assistant Conductors and Yardmasters who were VIA employees as of October 31, 1997 and to whom the Memorandum of Agreement dated March 6, 1987 in respect to the inter-Company transfer of employees between CN and VIA (the "Transfer Agreement") is applicable as per item 10 of the said Transfer Agreement, may apply for one of the following opportunities:

- (a) a voluntary retirement opportunity as defined in paragraph 9 above;
- (b) training as Locomotive Engineer, in seniority order;
- (c) exercise their right to return to CN under the terms of the Transfer Agreement'
- (d) receive a voluntary severance payment as set out in paragraph 11.

It should be noted, for the record, that certain of the terms of the Crew Consist Adjustment Agreement have been ordered by the Canadian Industrial Relations Board to be renegotiated. That Board decision is presently pending judicial review, and the parties are agreed that this matter should, in the circumstances, proceed on its merits subject, of course, to such outcome as may ultimately issue based on the eventual ruling of the Court.

The first preliminary issue raised is whether the Corporation had an obligation, under the terms of the Crew Consist Adjustment Agreement, to train more conductors, assistant conductors and yardmasters as locomotive engineers than there were locomotive engineer vacancies in a given terminal. In the Arbitrator's view that issue must be conclusively resolved in favour of the Corporation. The training of an individual for locomotive engineer service is a matter of some time and expense to the employer. That is particularly so under the new running trades structure. Previously conductors and assistant conductors could gain locomotive engineer training for the purpose of becoming engine service employees, who might work back and forth between the positions of conductor and locomotive engineer, as needed. With the elimination of the conductor and assistant conductor positions, a degree of flexibility is eliminated, as all running trades employees must effectively perform the former duties of locomotive engineers as part of their regular assigned duties. In the new "all or nothing" situation it is, absent clear and unequivocal language to the contrary in any agreement of the parties, reasonable to expect that the Corporation would determine the time and conditions necessary for training individuals as locomotive engineers to the purpose of filling actual vacancies which develop. There would be little or no reason for the Corporation to train more conductors and assistant conductors as locomotive engineers than might be needed for its actual operations.

That, in the Arbitrator's view, is reflected in the terms of the training agreement. By recognizing that persons are to be trained in seniority order, the agreement reflects the common sense understanding that there could never be positions in locomotive engineer service for all of the conductors and assistant conductors whose jobs were abolished. That is also reflected in articles 15 and 16 of the Crew Consist Adjustment Agreement which read as follows:

15 Conductors, Assistant Conductors and Yardmasters will be given full and unprejudiced consideration in the selection for training under paragraph 13(b) by the Corporation in accordance with the implementation plan established in consultation with the Brotherhood.

16 Conductors, Assistant Conductors or Yardmasters who apply for training as per paragraph 13(b) but are not selected or do not qualify for the position will be granted another of the opportunities they have applied for according to the provisions of paragraph 13.

The above approach is also consistent with established practice in the industry in relation to locomotive engineer training. (See, e.g., **CROA 2762**)

It does not appear disputed that the parties established an implementation committee under the terms of the Crew Consist Adjustment Agreement, comprised of representatives of both parties. The Committee reviewed opportunities for locomotive engineer vacancies in every terminal, canvassing eligible locomotive engineers to determine whether they might opt for early retirement. The committee identified the number of opportunities available at each terminal within the system, and to the extent that vacancies in locomotive engineer service were found, training opportunities were offered. In locations where no vacancies emerged, no training was offered.

The Arbitrator can see nothing contrary to the terms of the Crew Consist Adjustment Agreement in that method of approach. It would, in my view, be extremely counter-intuitive to conclude that the parties intended to provide locomotive engineer training to a substantial number of conductors and assistant conductors who might never expect to in fact fill a locomotive engineer's position. As noted above, given the new order of running trades organization within the Corporation, there was no latitude, as in the past, to train conductors and assistant conductors in the skills of a locomotive engineer for the purposes of filling relief or occasional work assignments in that classification, while continuing to work mainly in the now abolished classification of conductor and assistant conductor. Although 145 former conductors and assistant conductors applied for locomotive engineer training, the efforts of the implementation committee identified a total of fifty-two opportunities for training, based on the vacancies in

locomotive engineer service which were identified at the various terminals. Therefore, I can find no basis to conclude that the Corporation was under an obligation to train more applicants than there were opportunities for work as a locomotive engineer.

In my view the finite notion of opportunities for training is also reflected in articles 19 and 20 of the Crew Consist Adjustment Agreement which provide as follows:

19 Conductors, Assistant Conductors and Yardmasters will be given full and unprejudiced consideration in the selection for training under paragraph 17(b) by the Corporation in accordance with the implementation plan established in consultation with the Brotherhood.

20 Conductors, Assistant Conductors and Yardmasters who apply for training as per paragraph 17(b) but are not selected or do not qualify for the position will be granted another of the opportunities they have applied for according to the provisions of paragraph 17.

As is evident from the language of the foregoing articles, the parties clearly contemplated that not all applicants for training would necessarily be selected. That is the very reason why the fundamental access to training as a locomotive engineer was, by the terms of article 17(b) of the agreement to be dealt with in seniority order.

For all of these reasons, the Arbitrator is compelled to dismiss the first preliminary objection, and to confirm that the Corporation does have the right to limit training opportunities to correspond to the number of actual locomotive engineer vacancies in any given terminal.

The second preliminary issue concerns whether the Corporation had the right to establish a selection process to identify candidates suited for locomotive engineer training and, the related issue of whether the process which the Corporation did establish was a proper one.

As a threshold matter the Arbitrator has little difficulty with the issue of whether the Corporation was entitled to establish a selection process for identifying and approving candidates for locomotive engineer training. It appears axiomatic that such a fundamental management right would be available to the Corporation, as part of the inherent management of its enterprise, absent any specific provision in a collective agreement which might limit its prerogatives in that regard. Under the terms of article 6 of the Crew Consist Adjustment Agreement the Corporation did constrain its prerogatives by agreeing to develop a training program in conjunction with the Brotherhood. That was done, resulting in the joint training program document of May 21, 1998 which itself incorporates a screening process in the form of the six-step aptitude test noted above. The six steps of the screening process involve examining the background and experience of the candidate, including his or her personal and discipline record, a medical standards test, a test to determine basic physical requirements, a test of mechanical aptitudes, apparently consistent with one previously utilized at CN, a learning skills assessment, to be used only for guidance in assessing an individual, and finally an interview, at which stage the Brotherhood is involved. The Brotherhood has brought to the Arbitrator's attention nothing in the outline of the screening process which, on its face, would violate any substantive provision of the Crew Consist Adjustment Agreement, the parties' joint training program agreement or the collective agreement itself. The selection process developed jointly by the parties, and substantially modelled on a process that was previously in place at CN, is in my view reasonable, as it relates fully to the legitimate business interests of the Corporation in identifying and evaluating persons properly qualified, physically and otherwise, for training and work as a locomotive engineer.

These findings do not, of course, deal with the specifics of any of the steps of the screening process, as applied to any individual employee. In other words, whether the discipline record of a given individual has any real pertinence to his or her selection for training, or whether certain physical limitations of an individual do or do not disqualify that person from eligibility for training, are matters to be determined on the merits of individual grievances, to be heard on a case by case basis. As indicated at the outset, the purpose of this award is to determine whether there are any violations of the Crew Consist Adjustment Agreement, or the collective agreement, in the training selection process implemented by the Corporation. I am satisfied that none are disclosed.

For the foregoing reasons the preliminary objections and the policy grievance related to them must be dismissed.

May 2, 2000

(signed) MICHEL G. PICHER
ARBITRATOR