

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3124

Heard in Montreal, Wednesday, July 12, 2000

concerning

VIA RAIL CANADA INC.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

The Corporation's locomotive engineer training selection process.

JOINT STATEMENT OF ISSUE:

The Brotherhood contends that the Corporation has improperly denied locomotive engineer training to employees who failed the mechanical test.

The Corporation denies the Brotherhood's contention.

FOR THE BROTHERHOOD:

(SGD.) J. L. SHIELDS

FOR: GENERAL CHAIRMAN

FOR THE CORPORATION:

(SGD.) J. LAFLEUR

FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation (among others):

J. Lafleur – Counsel, Montreal

And on behalf of the Brotherhood (among others):

J. L. Shields – Counsel, Ottawa

J. Tofflemire – General Chairman, Toronto

AWARD OF THE ARBITRATOR

This grievance concerns the administration of a mechanical comprehension test to conductors of VIA Rail whose jobs were abolished. The test, administered as part of the selection process for locomotive engineer training, is one aspect of a larger process whose elements were agreed upon between the Corporation and the Brotherhood. Under the process candidates who successfully pass a work habits assessment screening then proceed to a test for mechanical comprehension, and thereafter to a learning skills assessment and an interview, before proceeding into the actual training program.

The mechanical comprehension test, sometimes referred to as an aptitude test, was selected by a Joint Training Committee which included representatives of the bargaining agent. The committee opted for the Bennet Mechanical Comprehension Test, a test which members of the committee had themselves passed when they were employees of CN seeking admission to locomotive engineer training. It is common ground that CN itself now uses a different mechanical comprehension test, and that it is a mandatory requirement that an applicant pass the test before proceeding to locomotive engineer training.

In the case at hand the passing grade was initially set at forty-five. It was subsequently adjusted downwards to forty, a change which apparently raised no objection from the Brotherhood, and is not itself a basis for the instant grievance.

At the outset the Brotherhood challenges a number of aspects of the mechanical comprehension test and the process surrounding it. Among other things, it submits that the test did not contain any adjustment for what the Brotherhood alleges is a gender bias which operates to the detriment of female applicants, that different standards of grading were used at different locations and that some applicants were treated differently than others within the process. Most fundamentally the Brotherhood submits that there is nothing in the joint training agreement which would approach of the Corporation, which is that any candidate who did not obtain a passing grade on the mechanical comprehension test must be eliminated from the selection process. The Brotherhood argues that the mechanical comprehension test should be but one of a number of factors, and that elements such as an employee's past service and seniority should be given equal or greater weight, and on occasion over-ride a failing grade in the mechanical comprehension test. With respect to the workings of the Bennet Mechanical Test counsel for the Brotherhood refers the Arbitrator to the decision of Arbitrator D. O'Shea in **Re P.C.L. Packaging Ltd. and Energy and Chemical Workers' Union, Local 593** (1983), 11 L.A.C. (3rd) 333.

Counsel for the Corporation questions all of the general challenges of the Brotherhood to the mechanical comprehension test. Firstly he stresses that within the industry, and notably at CN, a failing grade in the mechanical comprehension test results in the automatic removal of an applicant for locomotive engineer training. He maintains that the joint training program was formulated by a committee which included representatives of the Brotherhood, all of whom had experience with the Bennet test, and who took it in circumstances which made a passing grade mandatory for selection to locomotive engineer training. The Brotherhood knew or reasonably should have known that the same standard would be required within the process at VIA Rail.

Counsel also stresses that the gender bias of the Bennet test, which was a genuine factor in 1983 at the time of the O'Shea award, is no longer in existence. He stresses that the materials attached to the Bennet Mechanical Comprehension Test make it clear that the test as it presently stands has been adjusted for gender bias, and that there is no further basis for concern in that regard. He also notes to the Arbitrator's attention the fact that all of the tests, conducted in both French and English, were corrected by one individual, who did not have knowledge of the name of the candidate whose answers she was correcting. Counsel further notes that there is no evidence to suggest an additional submission by the Brotherhood to the effect that the test was substantially different in French and in English, and asserts that the opposite is true.

I turn to consider, firstly, the general challenges to the test made by the Brotherhood. I will deal separately with the eight individual claims which are also pleaded by the Brotherhood on behalf of persons who did not pass the test (**CROA 3130, 3131, 3132, 3133, 3134, 3135, 3136 and 3137**).

As a first principle, it is important to recognize that the joint training program established by the Corporation and the Brotherhood was negotiated in the shadow of a considerable history of existing practice within the Canadian

railway industry. It is not surprising, therefore, that the Joint Training Committee opted for the Bennet Mechanical Test as part of the process, as the members of that committee had themselves been required by CN to pass the test as a condition of admission to locomotive engineer training. On what basis can it be concluded that the parties have intended that an employee who fails the mechanical comprehension test could nevertheless progress to locomotive engineer training? I find it difficult to believe that they could have had such an intention to depart from long-standing industry practice.

The Corporation is a common carrier engaged in the safety sensitive transportation of passengers by rail throughout Canada. In that capacity it must be sensitive to its public image, and its responsibilities towards federal and provincial transportation authorities. In the event of any accident or mishap, its operations and employees may be the subject of intense and occasionally high profile scrutiny. It can scarcely be doubted that if, in the aftermath of a serious accident or derailment, it should publicly emerge that the locomotive engineer in charge of the passenger train involved had in fact failed his or her mechanical comprehension test prior to being trained as a locomotive engineer the Corporation would suffer obvious damage to its reputation. I find it difficult to believe that the Corporation would knowingly make itself liable to being placed in such a compromising position, or that the Brotherhood can be taken to have negotiated an agreement in the belief that it might have that result. I am therefore satisfied that the Joint Training Program Agreement must be interpreted to intend that a passing grade in the Bennet Mechanical Comprehension Test is a mandatory prerequisite to any further advancement in the locomotive engineer training process. In the result, absent other compelling mitigating circumstances, any person who scored a mark below the required level of forty would properly be excluded from locomotive engineer training.

Nor can I find any other meaningful irregularities or anomalies in the administration of the mechanical comprehension test, other than certain isolated problems relating to a few applicants which are dealt with in their separate decisions, that would justify the conclusion that administration of the Bennet Mechanical Comprehension Test was in some way flawed or prejudicial to any applicant. I am satisfied that the test is appropriate for assessing mechanical comprehension, that it was administered in a consistent manner at all locations, that it was marked in a manner that was fair and unbiased, and that the passing grade was selected in a manner that does not disclose arbitrariness, discrimination or bad faith.

The only arguable evidence of inconsistency in the administration of the test concerns the allegation of the Brotherhood that one employee, Mr. G. Tersigni, was treated preferentially in that he was contacted by telephone after he left the testing centre, and was advised by the test administrator that he had overlooked three questions. According to the Brotherhood he was asked to respond to the questions by telephone, with his answers presumably being added to his test results. The evidence discloses that in fact, however, the supplementary oral examination reportedly given to Mr. Tersigni did not in fact result in any advantage to him. He is among the eight employees separately before the Arbitrator who ultimately received a failing grade on the mechanical comprehension test. To the extent that there may be any truth to the Brotherhood's account, the Arbitrator cannot find that it resulted in any material unfairness or disadvantage to other candidates.

In the result the Arbitrator must dismiss the general challenge to the selection and administration of the Bennet Mechanical Comprehension Test. The grievance is therefore dismissed.

July 14, 2000

(signed) MICHEL G. PICHER
ARBITRATOR