

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3136

Heard in Montreal, Wednesday, July 12, 2000

concerning

VIA RAIL CANADA INC.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Anita Kell – Bennet Mechanical Comprehension Test.

JOINT STATEMENT OF ISSUE:

The Brotherhood contends that the Corporation has improperly administered and/or evaluated the Bennet Mechanical Comprehension Test taken by Ms. Kell.

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

Ms. Kell scored the lowest recorded figure among the grievors, being twenty-eight on the Bennet Mechanical Comprehension Test. In her case there is an external factor of some weight which is raised. It is not disputed that when she wrote the Bennett in 1998 Ms. Kell was under unusual personal stress as well as physical and mental exhaustion by reason of her husband then being terminally ill with cancer. He has since passed away.

It appears to the Arbitrator that in such a matter, the benefit of the doubt should be given to the applicant. I am satisfied, on the balance of probabilities, that the personal difficulties being suffered by Ms. Kell at the time that the test was administered rendered the process unfair as a basis for an accurate assessment of her mechanical comprehension.

Her grievance is therefore allowed. The Arbitrator directs that Ms. Kell be allowed a second opportunity to take the Bennet, or such other mechanical test as the parties may agree upon.

July 14, 2000

(signed) MICHEL G. PICHER
ARBITRATOR