

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 3913

Heard in Edmonton, Thursday 10 June 2010

Concerning

VIA RAIL CANADA INC.

And

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL
WORKERS UNION OF CANADA (CAW-CANADA)**

EX PARTE

DISPUTE:

Were Messrs Sam Nagler and Ken Fraser entitled to French language training?

UNION'S STATEMENT OF ISSUE:

In February 2009 Sam Nagler and Ken Fraser applied for French language training.

The Corporation asserts that Messrs Nagler and Fraser were not selected for French language training as they were not considered suitable for promotional training.

The Union contends that Messrs Nagler and Fraser were denied access to any of the selection process prior to being disqualified from the promotional training and that the criteria for the selection was arbitrarily applied with no meaningful relation to the position applied for. The Union further advances that denying senior employees access to French language training, void of reasonable merit, breached their statutory rights to equal access and promotion in a federal workplace.

The Union is requesting that the arbitrator order the training for the affected employees and award compensation for all losses accordingly.

The Corporation maintains that French language training is offered to those who are suitable for promotional training and that the selection process was done correctly.

FOR THE UNION:

(SGD.) R. FITZGERALD

NATIONAL REPRESENTATIVE

There appeared on behalf of the Corporation:

D. Stroka

– Sr. Advisor, Labour Relations, Montreal

C. Larivière

– Manager, Customer Experience, Winnipeg

B. A. Blair – Sr. Advisor, Labour Relations, Montreal
L. Selesnic – Manager, Customer Experience

There appeared on behalf of the Union:

B. Kennedy – President, Edmonton
D. Kissak – Regional Representative, Winnipeg
D. Andru – Regional Representative, Toronto

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the Corporation provides language training to employees conditional upon them being suitable for successful promotion into a position which does require bilingual skills. If, as a threshold question, the individual's overall qualifications, including his or her disciplinary record and conduct problems would disqualify that individual from the promotion, they will also be disqualified from the opportunity for the related language training. The Arbitrator is satisfied that that is a reasonable and logical policy of the Corporation. As confirmed in **CROA&DR 3662**, such factors as an employee's background and prior discipline may well have a proper bearing on whether that individual can be viewed as appropriate for promotion into a position of responsibility. In the case at hand, those positions would include higher rated classifications which require a bilingual status, including Service Manager and Assistant Service Coordinator.

The fundamental issue then becomes whether Mr. Fraser and Mr. Nagler were properly viewed by the Corporation as not suited to promotion into those positions, taking into account a number of factors, including their prior disciplinary records. Having reviewed that material the Arbitrator is satisfied that the Corporation did have reasonable grounds to judge that, at least as of the date of the applications in question,

they did not so qualify. In both of their cases their disciplinary record contains incidents which call into serious question their overall responsibility and ability to exercise the functions for which language training is required. In the case of Mr Nagler, there was discipline against him for having failed to comply with security protocols, travelling without proper identification and adherence to service in uniform standards. It also appears that he was spoken to with respect to his unacceptable behaviour towards a manager in August of 2008. In 2007 Mr. Fraser was assessed thirty demerits for misappropriation of Corporation property.

On the whole the Arbitrator does not consider that the actions of the Corporation were arbitrary or discriminatory, or based on irrelevant considerations having regard to the positions in which the grievors would utilize their French language training.

For the foregoing reasons the grievance must be dismissed.

June 18, 2010

(signed) MICHEL G. PICHER
ARBITRATOR