

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

CASE NO. 3914

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)**

DISPUTE:

Whether the Corporation violated article 12.17, 16.3 and 27.17 if collective agreement No. 1 for denying Mr. Andre Nobes the right to displace into the Employee Service Centre (ESC).

JOINT STATEMENT OF ISSUE:

On November 27, 2008 Mr. Andre Nobes was displaced from his In-Charge Baggage position as a result of article 12.4 of collective agreement no. 1. Mr. Nobes then tried to displace a junior employee from his scheduled Stockchecker position in the ESC but was denied as the Corporation deemed him not qualified as an ESC Stockchecker.

The Union contends there is no article in the collective agreement that disqualifies an employee, other than for disciplinary reasons, once that employee is deemed qualified under article 16.3. Moreover, the Corporation should have allowed Mr. Nobes to demonstrate his qualification for the position under article 12.17 of collective agreement no. 1. The Union also contends Mr. Nobes was discriminated against under article 27.17.

Proper redress for the Union is to allow Mr. Nobes to displace from the date of November 27, 2008 until he later held the position and reimburse all lost wages and benefits as a result.

The Corporation contends Mr. Nobes was not qualified.

FOR THE UNION:
(SGD.) R. FITZGERALD
NATIONAL REPRESENTATIVE

FOR THE CORPORATION:
(SGD.) B. A. BLAIR
SR. ADVISOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

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

C. Larivière – Manager, Customer Experience, Winnipeg

There appeared on behalf of the Union:

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

AWARD OF THE ARBITRATOR

The material filed by the Corporation confirms, to the Arbitrator's satisfaction, that the grievor did not in fact hold the qualifications that would have allowed him to displace into the position of stockchecker. Although he did work within that classification some twenty years ago, there have been material additions of importance to the duties and responsibilities of the job. Based on the material before me, which is substantially unchallenged, I am satisfied that Mr. Nobes could not have been oriented into that position so as to perform it responsibly and safely without a degree of formal retraining. In fact the record discloses that he subsequently required a three week period of training to qualify for the job, when he later successfully bid on a training bulletin for the stockchecker's position. In the circumstances I cannot agree with the Union that article 16.3 can fairly be said to have given the grievor a guaranteed access to the position of stockchecker. The language of that provision reads, in part, as follows:

... Those employees successfully completing the training for a given position will thereafter be considered qualified for that position ...

In the Arbitrator's view, at most what the foregoing language would indicate is that the grievor would have been considered qualified for the position as it existed in 1990. That is not to say that he must be considered qualified for the position as it stands today, a position which I am satisfied has changed in important material ways.

For the foregoing reasons the grievance must be dismissed.

June 18, 2010

(signed) MICHEL G. PICHER
ARBITRATOR