

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4235**

Heard in Montreal, September 10, 2013

Concerning

VIA RAIL CANADA INC.

And

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

DISPUTE:

The disqualification of Anna Iacono from the position of shared services clerk on September 29, 2011.

JOINT STATEMENT OF ISSUE:

Ms Iacono previously held the position of Pension services clerk . In February 2011, the position of Pension services Clerk and Benefits Services Clerk were merged. Ms. Iacono was disqualified from the newly created position in the department that she had been a long serving employee in.

The Union submits that the disqualification was inappropriate and that she be provided the proper training and be reinstated into her former department, that she be made whole in all aspects, including where appropriate, the payment of compensation for lost wages with interest.

The Corporation submits that following the merging of the positions of Pension services Clerk and Benefits Services Clerk in February 2011, Ms. Iacono and her fellow colleagues received training and coaching for their new duties. Ms. Iacono was disqualified eight (8) months after the merger of the positions and multiple training and coaching sessions. The Corporation submits the employee received ample training and coaching and that the disqualification was appropriate.

FOR THE UNION:
(SGD.) J. Fournier
National Representative

FOR THE COMPANY:
(SGD.) B. A. Blair
Senior Officer, Employee Relations

There appeared on behalf of the Company:

B. Blair	– Senior Advisor Employee Relations, Montreal
F. Placido	– Analyst Operations Support, Montreal
C. Cadotte	– Advisor Disability Manager, Montreal
M. Boyer	– Senior Advisor Employee Relations, Montreal

There appeared on behalf of the Union:

J. Fournier	– Unifor National Representative, Montreal
S. Auger	– Regional Representative, Montreal
M. Laroche	– Local Chairman, Montreal
A. Iacono	– Grievor, Montreal

AWARD OF THE ARBITRATOR

The grievor is a long service employee, having been hired in 1979. She performed the functions of a Pension Clerk commencing in June of 1992. Pursuant to material change notice issued in October of 2010 the grievor 's position as Pension Clerk was merged with the function of Benefits Clerk into the newly established position of Shared Services Clerk. That changed involved a reduction of the number of clerical positions from six to five. As an incumbent in the predecessor position the grievor had priority on the job posting for the newly merged position. The positions in question were posted on December 1, 2010. The grievor applied and was awarded the position on December 22, 2010.

It is not disputed that training was provided to the clerks who successfully bid on the new position. That included classroom training over a period of ten working days for the staffing and benefits portion and an additional five working days of training on the pensions content. Additionally, each employee was given a training manual to assist in their orientation.

The grievor's attendance at the in class training was interrupted by reason of a bereavement leave. Upon her return, she received coaching and additional training in

the new position, although she was absent for a period of time between May 4th and July 8th, 2011 by reason of illness. Following her return the grievor received an additional eight days of one-on-one training.

It soon became apparent that the grievor was having difficulty. The unchallenged representation of the Corporation is that the grievor's peer coach indicated it to Supervisor Filomena Placido that the grievor remained unable to perform basic tasks of the position and needed continuous help. During July and August of 2011 it became apparent that the grievor was not meeting the standards of the job and, indeed, complaints were being received with respect to her performance. After a review of the grievor's training and performance, she was deemed disqualified from the position on September 28, 2011. That adjustment was not viewed as disciplinary, but purely administrative by reason of her inability to do the work. In the result the grievor was required to accept a demotion to a lower rated position.

The Union's representative submits that the employer did not manage the grievor's performance appropriately to enable an identification of her shortcomings and their correction. In that regard he stresses that the shortcomings alleged against the grievor are clearly not culpable. He submits that having reached the point of thirty-five years' of service, twenty eight of which involved working as a Pension Clerk the grievor should be deemed qualified for the position in question.

The Arbitrator cannot agree. It seems manifest from the material before me that over a substantial period of time the Corporation took all necessary steps to train and orient Ms. Iacono in the functions of the newly merged position. There is no suggestion before me that the observations of her supervisors and the complaints received regarding her performance were not truthful and legitimate. Clearly, for non-culpable reasons, Ms. Iacono was simply not able to perform the functions of the newly merged position. In that circumstance, I am satisfied that it was not inappropriate for the Corporation to place the grievor in a demoted position. The Corporation clearly respected the collective agreement affording to grievor more than the thirty working days of adjustment to the newly assigned position, consistent with Article 12.16 of the Collective agreement. The Corporation also adduced in evidence objective data confirming its view of the grievor's performance. It notes, in part, that in the month of April, 2011 the grievor processed only thirty-seven VIP staffing events as compared with the average of one hundred and thirty two such events processed by each of her colleagues over that same period of time.

On the whole the Arbitrator is satisfied that the Corporation has dealt with the grievor fairly and patiently, and has made every reasonable effort to assist her in demonstrating that she is qualified for the new position. Unfortunately, for non-culpable reasons, the grievor has not been able to perform the job to the standard required over a training period of ninety five working days spread over an eight month period. It appears clear to the Arbitrator that the grievor has not demonstrated that she can perform the new position in an independent or autonomous fashion. Additionally, it

appears that the assignment of the grievor as a Stationed Service Attendant, where she has had access to substantial overtime hours has resulted in no loss of income to her.

In the result, I am satisfied that no violation of the collective agreement is disclosed and the grievance must be dismissed.

September 13, 2013

MICHEL G. PICHER
ARBITRATOR