

CANADIAN RAILWAY OFFICE OF ARBITRATION

& DISPUTE RESOLUTION

CASE NO. 4536

Heard in Calgary, February 7, 2017

Concerning

CANADIAN NATIONAL RAILWAY

And

UNITED STEELWORKERS – LOCAL 2004

DISPUTE:

Company failure to award Jason Kulpa a Track Maintenance Forman (TMF) job.

THE UNION'S EXPARTE STATEMENT OF ISSUE:

The Unions contends the Company has violated the provision of Article 15 (Bulleting and Filling Positions) 15.11 (c) and Article 16 (Seniority Status and Lists) 16.9 Article 22.11 of the Collective Agreement 10.1.

The Union contends the Company has violated the intent of Article 6.1.1 for untrained pay rate and 6.1.2 once they become trained

The Union contends that past practice for filling of job sets precedence.

The Union's position is Jason Kulpa should have been awarded a Track Maintenance Forman job by bid.

The Union contends the Company's interpretation of the requirement from Transport Canada. Transport Canada was making reference Track Supervisor and track inspectors not Track maintenance Forman. (TMF).

The Union seeks full redress for Brother Kulpa to including but not limited to any loss of pay difference, interest and benefits from the date of the awards bulletin until he is awarded and assigned to the job.

The Union request that Brother Kulpa be made whole for the difference in rate per KM from .25 to .33 as he is being forced to away from his home when there is work available to him at his home location including but not limited to paid travel time.

The Union further request the Company post a corrector showing Brother Kulpa as the successful applicant pending qualification.

The Union further request that the Company insure Brother Kulpa is provided the proper training to fulfill the job of TMF at North Battleford as this job has gone unfilled for over 9 month.

The Union and Company have discussed this matter at Joint Conference as per the Collective agreement without resolve.

FOR THE UNION:
(SGD.) M. Piche
Staff Representative

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

- B. Laidlaw – Manager, Labour Relations, Winnipeg
- D. Lilley – Senior Manager Training, Winnipeg

There appeared on behalf of the Union:

- G. Colli – Chief Steward Local 2004, Winnipeg
- R. Koch – President Local 2004, Winnipeg

AWARD OF THE ARBITRATOR

In September 2015, the Grievor was working as a track maintainer in North Battleford, Saskatchewan when he bid for the position of Track Maintenance Foreman (TMF).

The job description for the TMF position included the requirement that prospective applicants “*must be qualified on TGIS*”. “*TGI*” is the acronym for the *Track Inspection Guidelines*.

The Track Inspection Guidelines are set out in Section 7 of the Track Safety Rules, which provide as follows:

7. Certification and Training of Track Supervisors And Track Inspectors

7.1 Each railway Company to which these rules apply shall qualify and certify Track Supervisors and Track Inspectors to inspect track for defects or supervise restoration or renewal of track under traffic conditions. Each person certified shall have:

(a) At least:

(i) 1 year of experience in railway track inspection or maintenance and training from a course in track inspection and maintenance; or

(ii) A combination of experience in track inspection or maintenance and training from a course in track inspection or from a college level educational program related to track inspection.

The Company denied the promotion on the basis that the Grievor was not qualified on TIGs and did not meet the basic job requirements (1year experience) for the TMF position as set out in Section 7.1(a)(i) of TIGS.

The Union grieved, contending that the Grievor should have been awarded the TMF position and that the Company was in violation of article 15.11(c) of Agreement 10.1 which provides:

15.11(c)

If positions remain unfilled, they will be awarded to the senior employees bidding to establish seniority in that classification **provided such employees possess the basic job requirements** and are adaptable and suitable to be trained for the positions.

At the time the Grievor applied for the position it had been vacant for a period of nine months. It was common ground that, in the past in similar circumstances, the Employer had promoted individuals to the TMF position, pursuant to Article 15.11 (c), provided they were the senior employee and then subsequently allowed them to train into the required qualifications necessary.

However, in May of 2015 management's policy changed. The Company added the TIGS qualification as a job requirement for the TMF position. All the TMF positions thereafter were advertised as having to be "*qualified on TIGS*". The Company points out that Article 15.11(c) must be read in conjunction with the requirements of Section 7 of the Track Safety Rules which sets out the "*basic job requirements*" of at least one year experience. Accordingly, its past practice of awarding the senior employee an

unfilled TMF position no longer applied, after May of 2015, if the employee could not meet the basic job requirements set out in the TIGS.

There is no dispute that, at the time he bid the position, the Grievor was neither qualified in TIGS nor did he have the 12 months experience in railway track inspection or maintenance. Accordingly, the Grievor did not possess the “basic job requirements” - referred to in Article 15.11(c).

The Union argues that the Company’s position is untenable in light of its past practice wherein it appointed numerous individuals to the TMF position who did not have their TIGS qualification or the twelve months of relevant service. The Company does not dispute the fact that, until May 2015, it did not require TMF applicants to have the TIGS qualification or the twelve months of service.

The Union also raised, for the first time at the hearing, that, by virtue of Article 7.4 of the Collective Agreement, employees may accept a promotion, by bulletin, to a higher classification provided they completed the training and became qualified within twelve months from the day they are promoted. Article 7.4 reads as follows:

7.4 Notwithstanding the provisions of Article 16.10 of Agreement 10.1, employees may accept promotion by bulletin to a higher classification in order of seniority prior to taking training in such classification. Employees so promoted must complete the training and become qualified within 12 months from the date they are promoted to such higher classification or be returned to their former position and forfeit any seniority acquired through such promotion.

The Union argues that in the present case the employer ought to have promoted the Grievor on the understanding that he would acquire the required qualifications within 12 months as per Article 7.4.

The Company asserts that while a promotion, as envisioned by Article 7.4, is a likely result in circumstances where qualifications are lacking but where both seniority and basic qualifications are present, such is not the case here. The Grievor, in this case, lacked the threshold qualifications to be appointed (pursuant to Article 15.11) in that he neither qualified in TIGS nor did he meet the twelve months of service as referred to in Section 7 of the TSR.

I agree.

The employer retains the right to set the requirements for the TMF position. As indicated in **CROA&DR 2649**:

“It is within the prerogatives of the Company to establish qualifications for particular job assignments, subject to only limitations negotiated by the Union within the terms of the collective agreement. It is generally considered by board of arbitration that an implied term of any collective agreement is that qualifications for a given position must be established by the employer in good faith, and for bona fide business purposes having regard to the nature of the work in question...”

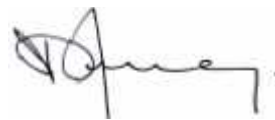
Documents were filed at the hearing (and subsequently) relating to employees appointed to the TMF position who did not possess the TIGS qualifications nor the twelve months experience. However, it became apparent that the appointees referred to therein were either appointed prior to May 2015 or, at best, otherwise represented an

explicable exception. Although challenged, the Company's position remained intact: since May 2015, the basic job requirements for an employee to be appointed to the TMF position was to either possess the TIGS qualification or have a minimum of one year of service.

In the circumstances, the Company's refusal to promote the Grievor was in keeping both with its management right to set job qualifications and its determination to meet the provisions of Section 7 of the Track Safety Rules.

Accordingly, the grievance is dismissed.

March 22, 2017



RICHARD J. HORNUNG
ARBITRATOR