

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

CASE NO. 5190

Heard in Ottawa, June 11, 2025

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The non-awarding of a bid to the senior applicant, Rail Traffic Controller (RTC) John Rushton on November 1, 2024.

JOINT STATEMENT OF ISSUE:

On October 21, 2024, RTC Rushton, following his being displaced from his own job, sought to displace a junior, regularly assigned RTC on Desk 22.

On November 1, 2024, the Company informed Mr. Rushton that his bid was rejected, stating that he did not meet the qualifications for Desk 22 and would not be awarded the bid.

Union's Position:

As the RTC with the most seniority who bid onto Desk 22, RTC John Rushton should have been awarded the position, in accordance with the Collective Agreement. Article 37 explicitly allows senior RTCs to displace junior RTCs based solely on seniority, with no limitations on language or territory specified. The company's actions violated Article 37, the principle of employment equity outlined in Article 2.3, and CN's own Language Policy, which commits to supporting employees in acquiring the language skills required for their positions.

The Union demands that RTC Rushton be retroactively awarded Desk 22, effective October 28, 2024, and be made whole for all associated losses, including financial damages and applicable interest.

Company's Position:

The Company disagrees with the Union's position and has declined the grievance.

For the Union:

(SGD.) J. Bailey

General Chairperson

For the Company:

(SGD.) R. Campbell Gutierrez

Labour Relations

There appeared on behalf of the Company:

H. Cameron

V. Kamis

F. Daignault

A. Nent

– Counsel, Norton Rose Fulbright, Ottawa

– Director RTC, Eastern Canada

– Director, Labour Relations, Montreal

– Norton Rose Fulbright, Ottawa

And on behalf of the Union:

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| K. Stuebing | – Counsel, Caley Wray, Toronto |
| J. Bailey | – General Chairperson, RTC, Edmonton |
| M. Martinson | – Vice General Chairperson, RTC, Edmonton |
| S. Charleau | – Local Chairperson, Edmonton |

AWARD OF THE ARBITRATOR

Context

1. The Grievor is an experienced unilingual RTC based in Edmonton. As a result of two positions being eliminated, the Grievor was bumped from his position and sought to bump into a position at Desk 22, which covers New Brunswick and a portion of Nova Scotia.
2. The Grievor's attempt to bump into Desk 22 based on seniority was refused by the Company, as the Grievor was not bilingual.

Issues

- A. Is the RTC position at Desk 22 bilingual imperative?**
- B. Does s. 37 of the Collective Agreement permit the bumping of a unilingual anglophone into a bilingual position?**

Is the RTC position at Desk 22 bilingual imperative?

Position of Parties

3. The Company underlines that the RTC position is safety critical, managing train traffic across the country in real time and has similar responsibilities to an air traffic controller. Mistakes, or communication issues, could easily lead to disaster affecting the public, train crews and Company assets.

4. Certain areas of the country, such as New Brunswick, have a high francophone population and the RTC on Desk 22 would need to interact in French with crew, other companies and the public.
5. Federal and Provincial legislation requires services to be provided in both official languages in certain parts of the country, including New Brunswick.
6. The Company and Union have always treated Desk 22 as being bilingual imperative, in recognition of the legislative and business realities.
7. The Union does not specifically contest the language requirements of work done at Desk 22.

Analysis and Decision

8. The Canadian Rail Operating Rules ("CROR") were adopted pursuant to the Rail Safety Act. Both are binding on the Company and its employees. At the beginning of the 100 plus page CROR Rules is a General Notice: "Safety and a willingness to obey the rules are of the first importance in the performance of duty. If in doubt, the safe course must be taken" (see Tab 3, Company documents).
9. The Company is also bound by the **Official Languages Act** ("OLA") RSC, 1985, c31 (4th Supp), of which the preamble notes that English and French are the official languages of New Brunswick. The OLA, s. 34 further notes that it applies to the language of work, such that French speaking employees in New Brunswick are entitled to work in French.
10. An RTC is a safety critical position similar to an air traffic controller. The Key Responsibilities and Job Requirements are set out in an External Ad (see Tab 9 Company documents):

Key responsibilities:

- Must be proficient in all rules (Canadian Rail Operating Rules), regulations and procedures governing railway operations under their control.
- Required to ensure on-track forces receive the maximum available time to perform maintenance work and inspections while avoiding delay to scheduled train movements.
- Must manage emergencies and other unexpected events ensuring primarily that the safety of the employees and public is protected while at the same time limiting the impact to railway operations.
- Required to maintain concise records and enter reports via various software applications.

Job Requirements:

- Excellent computer skills
- Strong math skills
- Ability to plan, organize and modify existing plans
- Strong communication skills in both English and French
- Unwavering commitment to rule compliance and safety
- Ability to work under pressure, in a high stress environment
- Ability to work in an open-concept environment
- Ability to make quick decisions and react effectively to emergencies with minimal supervision
- Previous experience as a Rail Traffic Controller would be an asset

11. The Company sets out the many duties of a RTC at paragraphs 26-38 of its Brief, none of which are contested by the Union.

12. Desk 22 covers territories in New Brunswick and parts of Nova Scotia (see Tabs 5-6, Company documents). In New Brunswick, approximately one third of all employees speak French at work (see Tab 7 company documents).

13. There can be no doubt that the RTC assigned to Desk 22 will be called upon to deal routinely with employees and members of the public in French. Given the requirements of the job, and the safety critical role an RTC plays, an extremely high level of French competency is required to perform this role safely.

14. Advertising for the Bilingual RTC roles have emphasized the need for “strong communication skills in both French and English” (see Tab 9, Company documents) and candidates are language tested before being given the role (see Tab 10, Company

documents). The bilingual nature of the positions is recognized in communications between the Company and Union, in the transfer of Montreal positions to Edmonton (see Tabs 10-11, Company documents).

15. It is noteworthy that the Union has itself complained to the Company when the French services provided were not at a sufficient level (see Tab 13, Company documents). The Union also sought (but has not yet obtained) a premium to recognize the value-added component of bilingual services (see Tab 14, Company documents).

16. I find that Desk 22 is a bilingual imperative position, in light of both the OLA legislative requirements and the safety requirements of the RTC position.

Does s. 37 of the Collective Agreement permit the bumping of a unilingual anglophone into a bilingual position?

Position of Parties

17. The Union argues that s. 37 of the Collective Agreement makes no mention of bilingualism as a job requirement in a bumping situation. The plain wording of the Collective Agreement recognizes only seniority as a determining factor. The Union submits that there is a history of employees “owning” a position for which they do not hold the qualifications, while “occupying” a different position. Here, the Grievor should have “owned” the Desk 22 position, while “occupying” a unilingual position. The Company is clearly breaching the provisions of s. 37 and not respecting seniority.

18. The Company argues that s. 37 of the Collective Agreement must be read within a legislative and historical context. Desk 22 requires an employee who is fluent in French in order to safely perform its RTC functions.

19. The Company disputes that there is a practice of permitting employees to “own” a position for which they are not qualified, while “occupying” a different position. The most that happens is that transfers are made to temporarily accommodate employees.

Analysis and Decision

20. Article 37.3 of the Collective Agreement reads as follows:

37.3 In the case of reduction in the number of regularly assigned RTCs or in the case of a regularly assigned RTC being displaced in any office, the employees affected must exercise their seniority in the following manner:

- (i) Displace a junior regularly assigned RTC located in the office; there being none,
- (ii) Displace the junior employee on their Permanent Unassigned Board.

21. I accept the Union argument that seniority is critical. As noted by Arbitrator Picher in

CROA 4308:

It is trite to say that seniority rights under the provisions of a collective agreement are among the most important to any employee as they are typically controlling in respect of such issues as protection against lay-off, job security and bumping rights. For these reasons boards of Arbitration have consistently found that the truncating or reduction of seniority rights or the exercise of seniority rights must be supported by clear and unequivocal language in the provisions of a collective agreement.

22. The Union is also correct when it notes that article 37.3 makes no mention of a bilingual requirement. Seniority is the only criterion mentioned.

23. However, principles of contract interpretation clearly recognize that a Collective Agreement is subordinate, and must yield, to legislative requirements. The OLA is a quasi-constitutional statute which clearly takes priority over any agreement between the Parties. As Chief Justice McLaughlin noted in **Parry Sound Social Services v OPSEU, Local 324**, 2003 SCC 42:

Rather, human rights and other employment-related statutes establish a floor beneath which an employer and union cannot contract.

24. Both legislative requirements and the practical realities of a bilingual RTC position, as shown above, require that the work at Desk 22 be done by a bilingual employee.

25. The jurisprudence supports the view that language rights and obligations can be read into a Collective Agreement. In **Re City of Moncton and IAFF, Local 999**, 131 CLAS 70 the panel found that the New Brunswick OLA required that a position be bilingual, even where the Collective Agreement was silent. Likewise, Arbitrator Picher found in **CROA 2298** that Via Rail Canada was reasonable in requiring certain positions to be bilingual.
26. I cannot agree that the decisions of Arbitrator Weatherill in **Re Stormont, Dundas and Glengarry board of Education**, 1986 Carswell Ont 3681 and **Re United Automobile Workers, Local 707 and Ford Motor Company** 1972 Carswell Ont 1464, cited by the Union, are helpful to their argument in the present matter. In both cases the Arbitrator found that a particular ability was an asset, but not part of the job requirements. Here, I have found that bilingualism is a requirement for the work done at Desk 22.
27. The Union argues, however, that the Grievor could be given the Desk 22 job based on his seniority, even if in practice the position was “occupied” by a bilingual employee. It argues further that the Company’s own Official Languages Policy requires that training be given (see Tab 2, Union documents).
28. This argument would have considerably more force if evidence had been led that the Grievor had demonstrated that he was interested and capable of becoming sufficiently bilingual within a reasonable time. Unfortunately, the evidence is otherwise. The Grievor was offered the opportunity to take subsidized language courses, which he refused (see Tab 8, Company documents).
29. The Union has argued that some other positions have been “owned” by employees without the necessary qualifications, while actually “occupying” positions for which they do have the qualifications. The evidence of this practice is mixed, with the Company alleging that these situations are created by accommodation or training needs.

30. I do not believe it is necessary to decide whether such a practice exists, because such a practice could not continue indefinitely. It is clear that there is a bona fide job requirement that the employee working at Desk 22 be bilingual. A very high level of French is required to be able to safely meet the requirements of a bilingual RTC role, given the chances of a safety mishap if there is any communication difficulty. Here, there is no evidence that the Grievor has even begun the necessary language training to be able to perform a role which is not dissimilar to that of an air traffic controller. There has been no evidence led that the Grievor could become bilingual at the necessary level within a reasonable time.

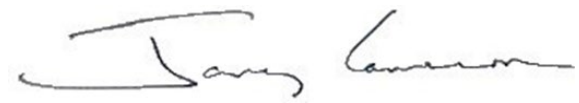
31. There is also no evidence that the Grievor has been prejudiced by the refusal of the Company to assign him this bilingual role. He bumped into another RTC position, with the same schedule and the same pay.

Conclusion

32. Accordingly, the grievance is denied.

33. I remain seized with respect to any questions of interpretation or application of this decision.

August 15, 2025

A handwritten signature in dark ink, appearing to read "James Cameron", is written over a solid horizontal line.

JAMES CAMERON
ARBITRATOR