

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 215

Heard at Montreal, Tuesday, June 9th, 1970

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL
WORKERS

DISPUTE:

The Brotherhood claims the Company violated Article 12.12 of Agreement 5.1 when it failed to award a position of Crew Dispatcher to MR. W. Mongrain.

JOINT STATEMENT OF ISSUE:

On February 17, 1969 the Company bulletined a position of Crew Dispatcher at Montreal. Seven applications were received for this position an in accordance with Article 12.12 management considered Mr. J.W. O'Sullivan the qualified senior applicant. Mr. Mongrain who was senior in service to Mr. O'Sullivan protested that he had the potential to fill the position and should have been awarded it on the basis of his seniority. The Brotherhood progressed the grievance and the Company declined to award the position to Mr. Mongrain.

FOR THE EMPLOYEES:

(SGD) J. A. PELLETIER
EXECUTIVE VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) K. L. CRUMP
ASST. VICE-PRESIDENT -
LABOUR RELATIONS

There appeared on behalf of the Company.

D. O. McGrath	System Labour Relations Officer, C.N.R. Montreal
G. A. Carra	Regional Labour Relations Officer, C.N.R. Montreal
M. Joannette	Asst. Crew Director, C.N.R. Montreal
W. Long	Labour Relations Assistant, C.N.R. Toronto

And on behalf of the Brotherhood:

J. A. Pelletier	Executive Vice President, CBRT&GW, Montreal
P. E. Jutras	Regional Vice President, CBRT&GW, Montreal
I. Quinn	Member of G.C. Local 334 Montreal
W. Mongrain	(Grievor)

AWARD OF THE ARBITRATOR

Article 12.12 of the collective agreement provides as follows:

"When a vacancy or a new position is to be filled, it shall be awarded to the senior applicant who has the qualifications required to perform the work. Management will be the judge of qualifications subject to the right of appeal by the employee and/or the Brotherhood. The name of the appointee and his seniority will be shown on the next bulletin."

The grievor had greater seniority than the successful applicant but was judged by management not to have the qualifications required to perform the work. The only issue to be determined in this case is that of qualifications. While an employee is entitled to a reasonable period in which to demonstrate his ability to perform the work, he must nevertheless have the qualifications at the time the appointment is made.

Some time after the appointment in question, the grievor applied successfully for the job Crew Dispatcher (Trainee and Relief). He appears to have been successful as a trainee, and was later able to act as relief dispatcher. It seems clear that the grievor is a good employee, capable of advancement, and in particular capable of learning the job in question. The issue in this case, however, is not one of his basic capacities but rather of his qualifications to perform the job of crew dispatcher at the time of the appointment. There can be little doubt that he did not then have those qualifications and did not meet the requirements of the collective agreement. That he had the qualifications to become a trainee does not establish that he had the qualifications of a crew dispatcher; the jobs are not the same, even though there may be no difference in the weekly rates of pay.

In his application the grievor, then classified as a clerk typist, gave as his qualifications a knowledge of office work and the fact that he was bilingual. Those were certainly relevant qualifications, but they were not sufficient to establish the grievor's ability to perform the job of crew dispatcher at the time of the appointment. That he was capable of learning the job is undoubted, but that is not the criterion called for by the collective agreement.

Accordingly, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR