CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 257

Heard at Montreal, Tuesday, January 12th, 1971

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAlLWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claim that the Company violated Articles 21.7 and 29 of Agreement 5.1 when it advertised a position of Motorman at Campbellton, N. B.

JOINT STATEMENT OF ISSUE:

A position of Motorman at Campbellton, N.B. was advertised on March 17, 1970 with the requirement that the successful applicant must be able to deal with customers in the French and English languages. The Brotherhood claims that because of this requirement Articles 21.7 and 29 were violated and that senior unilingual employees were discriminated against. The Brotherhood requests that the position be readvertised without the language requirement. The Company has denied this request.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. A. PELLETIER NATIONAL VICE-PRESIDENT	(SGD.) K. L. CRUMP ASSISTANT VICE-PRESIDENT LABOUR RELATIONS

There appeared on behalf of the Company:

D. O. McGrath	System Labour Relations Officer, C.N.R., Montreal
D. J. Matthews	Labour Relations Assistant, C.N.R., Moncton
J. O. Decelles	Superintendent Express, C.N.R., Campbellton
G. F. Hachey	Terminal Traffic Manager, C.N.R., Bathurst
J. K. Culkin	Manager Admn. Services, Linguistlc Serv., CNR, Montreal

And on behalf of the Brotherhood:

L. K. Abbott	Regional Vice President, CBRT&GW, Moncton
J. A. Pelletier	National Vice President, CBRT&GW, Montreal
W. Vance	Representative, CBRT&GW, Moncton

I have no doubt, from the material before me, that the company reasonably considered that the motorman at Campbellton should be able to deal with customers in French and English. That is, there was a valid business justification for requiring the successful applicant for the job to have that ability. The decision was a proper response to the needs of the community, and to particular requests which had been made. The question to be determined is whether the company was entitled unilaterally to impose this as a requirement for the job.

It is the company's responsibility, under article 12 of the collective agreement, to bulletin vacancies to the appropriate seniority group. Article 12.3 requires that all bulletins show "classilication and location of the position, general description of duties, necessary qualifications (where applicable), rate of pay", hours and rest days and the like. The vacancy is to be awarded to the senior applicant who has the qualifications required to perform the work. Management is to be the judge of qualifications, subject to a right of appeal: article 12.12. In this case, no question arises as to the exercise of judgment: it is not a question whether a particular applicant meets the qualifications, but rather a question of whether a particular qualification may be imposed at all.

In setting out the qualifications for a particular job, the company may quite properly have regard to the details of the individual Job. Thus, on the bulletin in question, there were a number of amendments made to fit the qualifications required to the particular work available. The requirement of meeting standards for trailer truck operation for example, was changed to one of meeting standards for straight truck operation with two speed axle. That is, the classification of Motorman is a classification capable of containing a number of particular jobs. New or modified equipment could be introduced, and the qualifications for a job could properly be amended to reflect that.

The union contends that the requirement, as a qualification for the Job of Motorman, of an ability to deal with customers in French and English, was not one the company could properly impose unilaterally. The union relies on article 21.7 and article 29 of the collective agreement. Article 29 sets out a procedure for establishing wage rates for new jobs. That procedure was not followed, as the company did not consider that a new job had been established. Article 21.7 is as follows:

> 21.7 No change shall be made in agreed classifications or basic rates of pay for individual positions unless warranted by changed conditions resulting in changes in the character of the duties or responsibilities. Wben changes in classifications and/or basic rates of pay are proposed, or when it is considered that a position is improperly classified or rated, the work of the positions affected will be reviewed and compared with the duties and responsibilities of comparable positions by the proper officer of the Company and the Regional Vice-President of the Brotherhood, with the object of reaching agreement on

> revised classifications and/or rates to maintain uniformity for positions on which the duties and responsibilities are relatively the same.

As is said above, the company may amend the statement of qualifications for a bulletined job to reflect the needs of the particular job available. There are, however, certain qualifications to this general proposition which must be made clear. The company contended that since the collective agree- ment did not define "qualified", it was therefore open to the company to set qualifications without hindrance. This does not follow at all. There is no need for the collective agreement to provide a definition for a term such as "qualified" or "qualifications". These terms have their own plain meaning, and in the absence of some speciel definition, that is the meaning which must be attributed to them. In this case, the company has said that ability to deal with customers in French and English is one of the "qualifications" for the Job of Motorman - at least for the particular Motorman's job that was posted. The question really is whether in imposing this requirement, the company has effectively changed the agreed classification. If it has, then it has violated article 21.7.

While it is up to the company to specify the particular qualifications for the particular Job - as for example, the ability to handle the particular type of vehicle involved it surely needs no arguing that the company could specify qualifications which go beyond the requirements of any Motorman's Job. For example, could the company properly impose as a qualification for some Motorman's job that the applicant be a licensed mechanic? Suppose, as a service to its customers, the company decided to make available to them motormen who were prepared to assist them in the design and decoration of their packages and containers, could it then require such skills as a "qualification" for a Motorman's job? The examples themselves need not be seriously considered, but they surely serve to point out that in some cases the imposition of new "qualifications" may go beyond the range of what may properly be required of an applicant for a Job in an agreed classification.

Did the imposition of an ability to deal with customers in French and English as a qualification for the Motorman's Job in question go beyond the range of what might properly be required of an applicant for a Job in that classification? It is my view that it did. lt would no doubt be assumed, and properly so, that any Motorman would be able to deal with customers in one or other of the Canadian languages. In some parts of the country, there could be no question as to which language was expected, and it could indeed be quite inappropriate to specify the other as the language to be used on the job. Subject to this, however, it would seem to me to be quite proper for the company to specify, if it wished, the language to be used, if it was felt necessary to do so. The requirement of an ability to deal with customers in either French or English is one thing; it is quite another thing to require of Motormen that they be - to the extent required by the Job - bilingual. The ability to carry out business dealings in a second language is a substantial one, involving skills, aptitudes and learning quite obviously distinct from those otherwise required of a Motorman. To require of a Motorman that he be able to deal with customers in both French and

English is, in my view, to impose a substantial additional qualification, and one which may well be said to amount to a change in the classification itself - or at least to take the particular job out of the agreed classification.

A somewhat similar case was decided differently by a board of arbitration of which Mr. J.A. Hanrahan was chairman, in the C.N.R. and Commercial Telegraphers' case In that case the stipulation that applicants for the Job of Manager - Repeater Attendant at Edmunston be bilingual was objected to. Much of the award was directed to the question whether the requirement of bilingualism was a reasonable one in the circumstances. It was the view of the majority that such a requirement was reasonable and I would, with respect, agree with that conclusion on the facts set out in the award. The majority of the board went on to hold that since the word "qualified" (used in a similar context in that agreement to that in the agreement in this case) was not defined, that left the company free to give that word its ordinary meaning, that is, "competent to fill the necessary requirements".

I quite agree that that is an apt way of expressing the ordinary meaning of "qualified". That is, I would add, not a meaning which the company was "free to give", but is simply the meaning of the term as it is used in the agreement, and it is binding on both parties. I must add, however, with the greatest of respect for the experienced tribunal which heard that case, that it appears to have confused the question of definition of "qualified" - properly said to be "competent to meet the necessary requirements" - with the question of the setting of those requirements, and the question whether such requirements might not constitute changes in the Job.

It may indeed be a "necessary requirement" that the incumbent of a job have some skill not formerly required. It is for the company to determine what requirements are necessary. It may be, however, that when all its requirements are formulated, the tasks expected to be performed by the applicants go beyond what might properly be expected for the particular Job classification listed in the bulletin. To use the somewhat extreme examples suggested earlier, it is conceivable that in some circumstances it would be a "necessary requirement" of the employee picking up and delivering goods with a truck, that he be a licensed mechanic, capable of carrying out all mechanical repairs to the truck. Even if it were held that the addition of this requirement were justified, it would also, I suggest, be the case that this constituted a change in the classification itself.

Of course, as was said in the Union Gas case, 12 L.A.C. 58, relied on in the Commercial Telegraphers' case, it is within the rights of management to change job qualifica- tions to meet changing conditions. But the question may arise whether any particular change of qualifications is within the scope of the existing classification, or constitutes a change in the classification itself, a requirement of some skill or attribute which could not reasonably be held to be (explicitly or implicitly) within the scope of the job. If the company's position in this case were correct, then it could, in some polyglot urban community, make it a "qualification" for the Job of Motorman that the applicant be able to deal with customers in Italian, Portuguese, Greek, German, or any other language, to say

nothing of the official languages of Canada. This may be thought absurd: indeed, in my view, it is, but it is the necessary consequence of the position urged on behalf of the company.

In my view, it would be quite proper, as I have said, for the company to set out as a qualification for any job as Motorman that the applicant be able to deal with customers in either of the official languages of Canada, as circumstances might require. The requirements that a man should have competence for this Job in two languagee, however, is one that goes beyond the bounds of the classification. It is really the proposal of a change or revision in the classification. Such changes are to be the subject of agreement between the parties, as articles 21.7 and 29 make clear.

For the foregoing reasons, the grievance must be allowed. The Job in question should be rebulletined, without the requirement that applicants be able to deal with customers in two languages. If such ability is required, however, that is a matter to be negotiated pursuant to the agreement.

J. F. W. WEATHERILL
ARBITRATOR