

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 545

Heard at Montreal, Tuesday, May 11th, 1976  
Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT  
HANDLERS, EXPRESS AND STATION EMPLOYEES

DISPUTE:

The Brotherhood claims that Mr. W. J. Penny should have been awarded a position of Ticket Salesman at Gander, Nfld.

JOINT STATEMENT OF ISSUE:

Mr. W. J. Penny applied for position of Ticket Salesman at Gander, Nfld. The Company advised him that he did not possess the necessary qualifications or experience to satisfactorily carry out the duties and responsibilities of this position.

After Step 3 representation had been made, the Company gave Mr. Penny a test and the Company advised that he only obtained a mark of 18 percent.

The Brotherhood requested copies of the test paper, answers and all related material and was denied. However, an offer was made by the Company for the General Chairman to examine the material in the Employee Relations Office, St. John's.

The Brotherhood claims that Mr. Penny has sufficient ability to fill the position and that the test given was unfair.

The Brotherhood demanded that Mr. Penny be awarded the position and compensated for all loss wages because of the non-appointment.

The Company denied the demand.

FOR THE EMPLOYEE:

(Sgd.) E. E. Thoms  
General Chairman

FOR THE COMPANY:

(Sgd.) S. T. Cooke  
Assistant Vice-President  
Labour Relations

There appeared on behalf of the Company.

A. D. Andrew	System Labour Relations Officer, C.N.R. Montreal
A. E. Putnam	Branch Mgr. Passenger Sales, C.N.R., St. John's, Nfld.
H. S. Peet	Employee Relations Officer, C.N.R., St. John's, Nfld.

N. B. Price                      Labour Relations Assistant, C.N.R., Moncton, N.B.

And on behalf of the Brotherhood:

E. E. Thoms	General Chairman, B.R.A.C., Freshwater, P.B., Nfld.
M. J. Walsh	Local Chairman, B.R.A.C., St. John's, Nfld.
T. F. Snow	''                      ''                      Lewisport, Nfld.

#### AWARD OF THE ARBITRATOR

The job which the grievor claims is that of Ticket Salesman at Gander; it is the Company's position that the grievor was not qualified for the job, which was awarded to a junior employee.

The duties of the job were set out in the bulletin as follows:

"Responsible for ticket office operation; preparation of bank remittances, daily, weekly and monthly reports (including monthly Balance Sheet) sale of tickets, making reservations, ticket abstracting, and other related duties."

The qualifications were listed as follows:

"Thorough knowledge of Passenger service, schedules, tariffs and accounting procedures, legible handwriting and neat appearance."

The grievor, who has considerable experience with the Company, listed as his qualifications certain positions which he had held in the past. One of these was Freight and Ticket Clerk, an apparently related Job which the grievor had held in 1964-5. It might be thought that because of this the case is analogous to Case No.258, where it was held that "From the fact of his having held the classification for years, it can be presumed that the grievor was qualified for it". In that case the grievor appears to have held the very position in question for a number of years in the past, and while there may have been some changes since the last time he held it, there was no evidence relating to his lack of qualifications, and it was held in effect that there arose, in the circumstances, a presumption that he was qualified. The real question in that case was the effect to be given to the grievor's lack of success in certain other jobs.

The instant case is quite different. The work which the grievor did as Freight and Ticket Clerk was quite different from that of Ticket Salesman, which involves passenger work, and it was, in any event, done many years ago.

This matter is governed by Article 6.7 of the collective agreement, which provides that the senior applicant who has the qualifications required to perform the work shall be appointed. The agreement sets out clear that the determination as to qualifications is one which management may make. As was said in Case No.123 and again in Case No.258, an arbitrator could not, except on the clearest evidence, substitute his opinion for that of management. If management's

judgment were exercised unfairly, or according to a wrong principle, then it could be set aside. In the instant case, however, the evidence does not show that such was the case.

After its decision in the matter had been made, and this grievance had been filed, the Company had the grievor undergo a test which was said to relate to his qualifications for the Job. Since this test did not form any part of the basis for the Company's original decision, it is not necessary to consider whether it could properly be relied on as revealing the grievor's qualifications or lack of them. I therefore give no consideration to its results, and it is not necessary to determine whether the Company was under any obligation to provide a copy of the test to the Union.

It has not, then, been shown that the Company made an arbitrary discriminatory determination in the grievor's case, or that he was "apparently qualified" for the job in the sense in which that phrase is used in Case No.258, and also in Case No.293. Accordingly, the grievance must be dismissed.

J.F.W. WEATHERILL  
ARBITRATOR