

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 582

Heard at Montreal, Tuesday, December 14th, 1976

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

Brotherhood's claim that Mr. Stryde be appointed Ticket Salesman at Gander and reimbursed for all loss wages because of the non-appointment.

JOINT STATEMENT OF ISSUE:

Mr. Stryde applied for position of Ticket Salesman, Gander advertised by Area Bulletin No. 9/1, Job.No.18, dated May 18, 1976.

The Company denied him the position claiming that he did not possess the necessary qualifications to satisfactorily carry out the duties and responsibilities of the position.

The Brotherhood claims the Company stands in violation of Article 6 in the agreement and also guilty of discrimination and claimed that Mr.Stryd should be appointed and compensated for all loss wages.

The Company denies the charge and did not agree to appointing Mr. Stryde to the position or compensate him.

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.
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.

AWARD OF THE ARBITRATOR

The position in question was one of three Ticket Salesman positions at Gander. Two of these are "junior" positions and the third, the one in question, is the "senior" position, having some degree of supervlsion over the other two, and having an overall responsibility for the functioning of the ticket office. The duties of the Job were described as follows on the bulletin:

"Responsible for ticket office operation, preparation of bank remittances, daily, weekly and monthly reports (including monthly balance sheet). Sale of tickets, making reservations and ticket abstracting and other related duties."

The qualifications were set out as follows:

"Thorough knowledge of passenger services, schedules, tariffs and ticket office accounting procedures. Legible handwriting and neat appearance."

The grievor, in his application, set out his qualifications as follows:

"My qualifications are grade 11 education, 3 years experience as general clerk, Toronto, 3 years experience as general clerk, Stephenville Crossing, 3 years experience as P & D motorman, Gander, 10 years experience as highway motorman, tractor trailer, Grand Falls, 2 years freight checker and motorman and 1 year timekeeper, E.C.M. & F.S., Lewisporte. I have also had over 2 years experience as salesman with Lewisporte Wholesalers and Canadian Fairbanks Morse."

The job was awarded to an employee junior to the grievor, whose qualifications do not appear to be in doubt.

The matter is governed by Article 6.7 of the collective agreement, ment, which is as follows:

"6.7 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 date will be shown on the next bulletin."

Under this provision, the question is whether the senior applicant for a position, in this case the grievor, has the qualifications required to perform the work. This, it has been held, means the qualifications necessary (subject perhaps to a familiarization period) to perform the work without training. It is recognized that the Company is, in the first instance to be the judge of qualifications. In the instant case, the Company considered that the grievor was not qualified to perform the Job in question. This

opinion, it may be noted, is not seriously challenged in this case.

It is the Union's position that the Company's decision was not taken in the proper exercise of the power given by Article 6.7, in that the Company discriminated unfairly against the grievor. Two questions arise with respect to this sort of allegation: 1) did the Company in fact discriminate unfairly against the grievor? and 2), if it did, is the grievor entitled to the Job? It would not follow from a finding that there was discrimination, that the grievor would necessarily be entitled to the Job. It must also be determined that he was qualified to perform it.

On the first question, the evidence is that in certain earlier instances where a similar Job had been posted, the senior applicant had been granted the Job, even though he did not have the necessary qualifications. On analysis, there appears to have been only one case really analogous with the instant case, and there an employee who was not qualified was given the Job, the qualified applicants being junior to him. This was done approximately one year before the instant case arose; it is not the case that there was improper discrimination between applicants on the same bulletin. Further, it would appear to have been contrary to the collective agreement: the Junior employee in that case, if qualified, would have been entitled to the Job and could have grieved over not being accepted. The collective agreement does not establish seniority alone as the criterion of success on a Job bulletin; rather, the job must be awarded to the senior qualified applicant. Neither party can, in effect, alter the collective agreement simply by misapplying it. Where the collective agreement is wrongly applied in one case, it does not thereby become improper discrimination when it is correctly applied in another case, arising a year later.

On the facts of this case, then, I do not conclude that the Company improperly discriminated against the grievor. It is not necessary to deal with the second question, but it may nevertheless be observed that the grievor's qualifications to perform the work without training have not been established. It may well be that he could learn the job within a relatively short time, but that is not what the collective agreement requires.

For the foregoing reasons, the grievance must be dismissed.

J.F.W. WEATHERILL
ARBITRATOR