CANADIAN RAILWAY OFFICE OF ARB1TRATlON

CASE NO. 656

Heard at Montreal, Tuesday, March 14th,1978

Concerning

ONTARlO NORTHLAND RAILWAY

and

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

EXPARTE

DISPUTE:

The Company in serving their Notice dated July 29, 1977 concerning Computer Operator Training Program abrogated our Agreement by stating the applicants be qualified by successfully completing the Company's Computer Training Program or equivalent of same, effective January 1,1978. The Articles violated are 4.3, 6.2.

EMPLOYEES' STATEMENT OF lSSUE:

Since the introduction of the computer in 1969 positions created came under the full scope of our agreement.

These positions or permanent vacancies were bulletined in accordance with Article 4.3 of our Agreement.

These positions were also subject to Article 6.2 since 1969.

FOR THE EMPLOYEES:

(SGD.) A. J. TlERNAY
General Chairman

There appeared on behalf of the Company:

A. Rotondo	Manager, Labour Relations, 0.N.R., North Bay, Ont.
D.V. Allen	Director Personnel & Labour RelatIons, 0.N.R.,North Bay, Ont.
J.M. Philp	Manager Data Processing, 0.N.R., North Bay, Ont.

And on behalf of the Brotherhood:

A.J. Tiernay	General Chairman, B.R.A.C., North Bay, Ont.
M. Peloquin	General Chairman, B.R.A.C., Montreal
F. Pincivero -	Vice General Chalrman, B.R.A.C., North Bay, Ont.

AWARD OF THE ARBITRATOR

Article 4.3 of the collective agreement is as follows:

"4.3 New positions and permanent vacancies will be bulletined for a period of three working days. In bulletining positions a brief description of duties will be given. Employees desiring such positions will file their applications with the designated officer within that time and an appointment will be made withih three working days after close of bulletin. Such position or vacancy may be filled temporarily pending an assignment. The name of the appointee will immediately thereafter be posted where the position or vacancy was bulletined."

Article 6 of the collective agreement deals with staff reductions, displacement and recall. Article 6.2 provides for the exercise of displacement rights by senior employees whose positions are abolished or who are displaced. lt is not necessary to set out the article in its entirety here.

Reference should also be made to Article 4.1, which sets out the general operation of the seniority principle under this collective agreement.

"4.1 Promotion shall be based on ability, merit and seniority, ability and merit being sufficient, seniority shall prevail. The Department officer in charge shall be the judge, subject to appeal. Should an employee not be promoted in his turn, the Chairman of Employees' Protective Committee will, on request, be furnished with the reasons therefor in writing."

The notice dated July 29, 1977, which the Union contends is contrary to the collective agreement, is as follows:

"NOTICE - Computer Operator Training Program-Data Processing

As of September 6, 1977, a training program for prospective computer operators in Data Processing will be available to all General Office Employees (Brotherhood of Railway Clerks).

The objective of this program is to assist prospective applicants for computer operator positions to learn what the jobs involve and what skills are required to successfully carry out the assigned duties.

Effective January 1, 1978 applications for positions of Computer Operator will be accepted only from employees who have success- fully completed the Operator Training Program, or who have successfully completed the tests.

The Training Program will be administered by the Systems Supervisor, Mr. Dennis Andrews, and will be set up as follows:

Stage 1: Self-study book on computer operating in general with the Systems Supervisor being available after hours to answer questions and explain concepts. Estimated time to complete this stage is 35 hours.

Stage lI: Self-study lBM System /3 manual along with 6 hours

observing in the computer room in a production environment. Again, the Systems Supervisor will be available for consultation. Estimated time to complete this stage is 15 hours.

Employees wi11 be expected to complete this course on their own time and there will be a written test at the end of each stage to certify successful completion.

For further information on this program, please contact Mr. D. Andrews at Local 349 or, in his absence, the undersigned at 356."

ln the past when there had been bulletins issued for vacancies in the position of Computer Operator, the Company had, so the Union contends (and this is not in issue) chosen the senior applicant, even although the senior applicant may not have had any previous experience or knowledge of data processing. Of course, if there were no qualified applicants on such postings the Company would then have been free to hire emplcyees from outside the bargaining unit. In some cases, however, it awarded the positions to bargaining unit employees (even where these were unqualified), choosing, it would seem, the senior applicants and then training them on the Job. The Company was not bound to do this, however. The collective agreement does not require that a training period, as such, be provided although under Article 4.8 (a) employees accepting a promotion are allowed "a reasonable time in which to qualify". That is not the same thing as a training period. Under this collective agreement, a person seeking promotion on a bulletin, or seeking to displace another in a particular Job must be able to perform the work involved subject to the operation of Article 4.8 (a).

The Company, then, was not required to accept unqualified applicants for the job of Computer Operator, and the fact that it did so, and did train such persons, does not alter the collective agreement, or create an obligation where none existed before. ln its notice of July 29, 1977, the Company announced a training program which would qualify those who successfully completed it to become Computer Operators. lt also announced that it would only accept applications on future bulletins for that position from persons who had either successfully completed the program or successfully completed the tests (so that completion of the program was not the only way to become qualified). The real effect of this second announcement was that the Company would only accept qualified applicants for the position. This, in my view, did not affect the rights of any employee under the collective agreement, since the Company is entitled to insist on qualified applicants for any position (subject to Article 4.8, as noted). As between qualified applicants (that is "ability and merit being sufficient"), then of course seniority must prevail in promotion cases, as Article 4.1 makes clear, and of course too seniority rights may be exercised in displacement cases in accordance with Article 6. The Company cannot, and does not purport to change these collective agreement provisions. The requirement that Computer Operators be qualified is not a violation of the collective agreement.

As to the first announcement made in the notice of July 11, there

does not appear to me to be any violation of the collective agreement in the Company's making available to employees (apparently at no cost, although that is not clear from the material before me), a program of instruction whereby they may qualify themselves for a higher-rated job. That sort of educational improvement would appear to be of benefit to the employees and to the Company alike. Some collective agreements have provided for a certain payment by an employer toward costs of education on the successful completion of the work; in this case, it appears that no such costs would be involved. The employee undertaking such studies is not "at work" for the employer while studying, and would not be entitled to be paid for his time unless there were some clear provision in the collective agreement to that effect. There is no such provision in this collective agreement.

The provision of this opportunity for self-improvement is not analogous to the requirement that certain employees undertake certain training or studies relating to their work. Persons in a certain classification, for example, may be required to take courses to familiarize them with new equipment or techniques and such persons are indeed "at work" (albeit in a somewhat special sense) and entitled to payment in respect of such time. In the instant case employees are not required to do anything. Rather, an opportunity has been provided for those who wish to take advantage of it. The preparation and teaching of the course (to the extent that teaching is involved) is an effort and expense put forward by the Company. Employees who wish to increase their owr chances of advancement (always in accordance with the provisions of the collective agreement) may put forth the necessary effort to study and learn, if they wish. There is nothing contrary to the collective agreement in any of this. lt would be proper to repeat, however (and the Company has acknowledged this), that even where an employee may have successfully completed the course or passed the tests, any appointment to a position of Computer Operator (or any other position) must be made in accordance with Article 4.1 and subJect to Article 4.8. Further, the provisions of Article 6 must be given effect where the circumstances arise.

There has, in the instant case, been no violation of the collective agreement and the grievance must therefore be dismissed.

J.F.W. WEATHERILL
ARBITRATOR