CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1186

Heard at Montreal, Tuesday, February 14, 1984
Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim of Bridges and Building Painter M. Mizner that he should have been awarded the position of Carpenter as advertised in Special Bulletin No. 1 dated October 15, 1982.

JOINT STATEMENT OF ISSUE:

Mr. Mizner was not appointed to a Carpenter position in a higher classification on account of not being qualified. Mr. Simpson who was junior to Mr. Mizner was appointed to the position on 24 November 1982.

The Union contends that the Company violated the terms of the "Training Agreement" dated 27 March 1981 which forms a part of Agreement 10.1 as Appendix XV and in particular Article 3.13. They have therefore requested that Mr. Mizner be appointed to the Carpenter position.

The Company has denied the request.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) PAUL A. LEGROS	(SGD.) D. C. FRALEIGH
System Federation General Chairman - Eastern Lines	Assistant Vice-President Labour Relations

There appeared on behalf of the Company:

T. D. Ferens	- Manager Labour Relations, CNR, Montreal
D. Lord	- System Labour Relations Officer, CNR, Montreal
H. W. Hartman	- Labour Relations Officer, CNR, Moncton
G. J. Richardson	- B&B Master, CNR, Moncton
V. Wheaton	- Employee Relations Assistant, CNR, Moncton

And on behalf of the Brotherhood:

Paul Legros	- System Federation General Chairman, BMWE, Ottawa
J. Roach	- General Chairman, BMWE, Moncton
R. Gaudreau	- Vice-President, BMWE, Ottawa

AWARD OF THE ARBITRATOR

In this case the grievor, Mr. M. Mizner, Painter, was not awarded the Carpenter's position that was posted in the ordinary course. The position was given to Mr. Simpson, a less senior employee who was found to be qualified. The grievor at the time his application was considered was determined to be unqualified.

In order to defuse a grievance the employer offered the grievor the opportunity to display his qualifications for the position by trying a test. The grievor agreed to undergo the test. Mr. Simpson also agreed to try the test. In due course the grievor failed and Mr. Simpson passed the test.

As I understand the union's grievance, the employer has allegedly violated Article 3.13 of Wage Collective Agreement 10.1 in foisting a test upon the grievor without first giving him an opportunity to train for the carpenter's position. It is argued that only at the end of a required training period can the employer legitimately determine the qualifications of the most senior candidate for a bulletined position. The trade union did not challenge the notion that the grievor was unqualified for the position at the time his application was considered. Article 3.13 reads as follows:

> "3.13 An employee will not be required to attempt a particular qualifying test without having had an opportunity to receive the appropriate training or be exposed to that aspect of the job."

The employer argued that Article 14.10 of Wage Agreement 10. governed the selection of the appropriate candidate for the Carpenter's position. Despite the grievor's seniority he did not hold the necessary qualifications for that position. He was therefore properly rejected. Article 14.10 reads as follows:

> "14.10 A qualified employee appointed to a higher classification by bulletin will be accorded a seniority date from the date of appointment on bulletin in such classification and in all lower-rated classifications in which he is qualified to work and in which he had not previously established seniority."

Moreover, the employer submitted that the training provision contained in Appendix XV (which was a supplemental agreement to Wage Agreement 10.1) was only intended to benefit employees who had "seniority" in the position for which the training courses were required. Since the grievor did not have "seniority" in the position he was claiming entitlement and since the objective of such training is to upgrade the qualifications of such employees, the trade union's claim that the grievor, as the more senior candidate, should have been extended the benefit of Appendix XV was without foundation under the collective agreement.

It seems to me that if the trade union's claim on the grievor's behalf to the benefits of Appendix XV is correct, then the purpose of Article 14.10 (and the arbitral precedents interpreting that

provision) is patently ineffectual. Clearly, Article 14.10 contemplates that the most senior candidate who applies for a bulletined position must be "qualified" in order to succeed. Nowhere in that provision is it contemplated that the more senior candidate be extended the benefit of a training period to establish his qualifications to the exclusion of a more ir? ediately qualified, if not senior, applicant. I am satisfied that the employer's case succeeds solely on the basis of Article 14.10 of the collective agreement.

Moreover, Article 3.1 of the collective agreement specifically restricts the requirement for training courses to "regular" employees who "will be required to take training and attempt qualifying tests in all classifications in which he holdsseniority". In other words, the objective of such training is to ensure the maintenance of an employees continued qualifications in a particular position for which he has seniority or to upgrade those qualifications in preparation for a potential change in job position. I am in total agreement with the employer's position that the training provisions are not intended to be used as an adjunct to Article 14.10 allowing unqualified applicants, despite their seniority, to train and to become qualified for a bulletined position.

I accept the employer's explanation that the reason the grievor was given the opportunity to try the carpentry test was to demonstrate his lack of qualification for the position. Because the trade union was not privy to this "arrangement" the employer's motives were unfortunately misconstrued.

Nevertheless, no case for a violation of the collective agreement was shown and the grievance must be denied.

DAVID H. KATES,
ARBITRATOR.