

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1206

Heard at Montreal, Tuesday, March 6, 1984

Concerning

CANADIAN NATIONAL RAILWAY COMPANY  
(CN Rail Division)

and

CANADIAN BROTHERHOOD OF RAILWAY,  
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claim of Mr. W. Florian of Sydney, Nova Scotia for incumbency payment.

JOINT STATEMENT OF ISSUE:

On November 30, 1981, Mr. Florian was displaced from his Train Movement Clerk position. He elected to displace onto a lower payment Express Motorman position on day shift. He claimed incumbency payment for the difference in earnings. He had not displaced onto Train Movement Clerk positions on the afternoon or midnight shifts. In his opinion, he was not qualified for those positions. The Company considered him qualified. The Company declined payment of the incumbency rate claimed for this difference in earnings.

The Brotherhood contends the Company is in violation of Article D.1 of the Special Agreement dated November 14, 1980. The Company disagrees.

FOR THE BROTHERHOOD:

(SGD.) TOM McGRATH  
National Vice-President

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH  
Assistant Vice-President,  
Labour Relations.

There appeared on behalf of the Company:

W. W. Wilson	- Manager Labour Relations, CNR, Montreal
S. A. MacDougald	- System Labour Relations Officer, CNR, Montreal
H. W. Hartman	- Labour Relations Officer, CNR, Moncton
R. Canning	- Carload Manager, CNR, Halifax

And on behalf of the Brotherhood:

Garry Murray	- Representative, CBRT&GW, Moncton
W. C. Vance	- Regional Vice-President, CBRT&GW, Moncton

AWARD OF THE ARBITRATOR

The simple issue in this case is whether the grievor was "qualified" to perform the Train Movement Clerk's position on afternoons and nights after his position as Train Movement Clerk on days was abolished on November 30, 1981. If qualified then the grievor has waived his eligibility for incumbency payments under Article D.1 of the Special Agreement by virtue of his failure "to accept the highest rated position for which he was senior and qualified" after his regular position was abolished. If unqualified, then the grievor would be entitled to the incumbency payment with respect to the lower rated position (Express Motorman) for which displacement privileges were exercised.

The uncontradicted evidence demonstrated that the grievor had just completed a 3.5 month training period in the Train Movement Clerk's position that would have qualified him to perform 75% of the functions of the position. What remained for him to master was the learning of certain "YIS" procedures for which the company was prepared to extend him the benefit of instruction. In this regard these procedures were simply an adjunct to the training that had hitherto been completed by the grievor. The time required to master these procedures would take, according to the company's position, as little time as three days with appropriate instruction. In other words, although the grievor would not be capable of doing a portion of the work of the Train Movement Clerk's position he was immediately qualified to perform a substantial portion of it. In other words, what was required of the grievor was simply a period of familiarization to perform all the functions of the position.

If this were a promotion or transfer case for which the grievor had been denied the position, despite his seniority, because of the particular cloud on his qualifications described herein, I would have no misgiving in awarding him the position.

For like reasons, I am satisfied that the grievor forfeited his entitlement to incumbency payments under Article D.1 of the Special Agreement by virtue of his failure to bid on "the highest rated position for which he was senior and qualified".

For all the foregoing reasons the grievance is denied.

DAVID H. KATES,  
ARBITRATOR.