CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1231

Heard at Montreal, Wednesday, April 11, 1984

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN EXPRESS DIVISION)

And

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Request of Mr. T. Cunningham of Belleville, Ontario, for training to become a qualified lead hand warehouseman.

JOINT STATEMENT OF ISSUE:

Mr. Cunningham was employed as a warehouseman from March 23rd until April 13, 1981. When displaced he requested to displace a lead hand warehouseman. The Company did not consider him qualified for the position and declined his request. His subsequent request to be trained for this position was declined by the Company.

The Brotherhood contends Mr. Cunningham had suffered a substantial reduction in pay and had the suitability and adaptability to be trained for the position. The Brotherhood contends the Company's denial of training was a violation of the provisions of Article B.1 (iii) of the Special Agreement dated November 14, 1980. The Company disagrees.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) TOM McGRATH National Vice-President	(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	- Labour Relations Officer, CNR, Montreal
B. Gazely	- Human Resources Assistant, CNR, Toronto
B. L. Olson	- Labour Relations Officer, CNR, Winnipeg

And on behalf of the Brotherhood:

T. N. Stol	- Representative, CBRT&GW, Toronto
Tom McGrath	- National Vice-President, CBRT&GW, Ottawa

AWARD OF THE ARBITRATOR

Once the company concluded that the grievor, Mr. T. Cunningham, was unqualified to displace the incumbent who occupied the lead hand warehouseman position at Belleville, Ontario, he was entitled to train for that position unless, pursuant to Article B.1(iii) of the Special Agreement, the following criteria could not be met:

> (1) he did not suffer a substantial reduction in his rate of pay;
>
> (11) he does not have the suitability and adaptability to perform the duties of the position; and
>
> (111) he must indicate a willingness to work in the job for which he is trained whenever vacanties exist.

The company has conceded that the grievor has satisfied the first criteria for entitlement to train for the lead hand position. The parties are apart on the second and third criteria.

On the issue of whether the grievor has the "suitability" and "adaptability" to train for the position I am of the view that the company has applied an unrealistic standard in determining this aspect of the grievor's entitlement. It must be borne in mind that the company had already concluded that Mr. Cunningham was unqualified for the position. This conclusion has not been contested. The issue, therefore is not whether the grievor fits the criteria for qualifying for the lead hand position as was expressed in the company's brief but whether he exhibits the threshold requirements of suitability and adaptability to train in order to become qualified.

In this context the question to be asked, having regard to the grievor's experience, education and ability, is whether he has the potential, after a reasonable training period, to become qualified. If there exists some obvious impairment to his capacity to learn the job after a reasonable training period then the company may conclude, with some assurance, that the grievor does not have either the suitability or the adaptability to train. Accordingly, he would not be entitled to the benefits of Article Bl (iii) of the Special Agreement.

Nothing that was adduced in evidence has convinced me however that the grievor lacks the potential, having regard to his previous experience, to master the new technology required to perform the position or to acquire the know-how to perform the supervisory functions demanded of a lead hand. In the absence of such evidence to the contrary, I am satisfied of the grievor's suitability and adaptability to perform the duties of the position provided he is given a fair and reasonable opportunity to train.

On the issue of whether the grievor is prepared to work on any vacant lead hand job for which he is trained, it seems to me, if there is any doubt, that the appropriate question should be asked of Mr. Cunningham. He is certainly prepared to train for and occupy a lead hand position at Belleville. He has not been asked if that is the

limit of his ambition should he otherwise become qualified.

The final obstacle raised by the company as to the grievor's eligibility to train relates to his displacement privileges should he at a later date become qualified. The company insists that the language of Article Bl (iii) restricts the grievor's eligibility, once qualified, to filling a vacant position. The trade union, on the other hand, has referred to a letter of understanding between the parties that appears to have amended or altered the language of the collective agreement. The relevant portion of the letter of understanding reads as follows:

> "In such cases where employee training has been arranged....the following will apply:
>
> (1) Such an employee will not be considered as having his position abolished or being displaced until he has successfully completed the training, at which time, the company will place him on a position for which trained."

I am of the view that the issue of whether or not a vacancy exists in a lead hand position at the time training is requeste should not affect an employee's entitlement to train provided the other criteria of the Special Agreement have been met. Nor does the letter of understanding necessarily mean, as the trade union suggested, that an employee, once qualified, can bump into any position he chooses. All the letter seems to indicate is that once an employee, in the grievor's circumstance, has been given the opportunity to train and he has qualified the company must then place him in a position for which he has been trained. Whether the position for which qualification has been met is vacant or occupied by a less senior incum?ent is irrelevant to the grievor's entitlement to be offered the opportunity to train.

Accordingly, since the grievor has met all of the criteria required of him in order to be entitled to train for the lead hand warehouseman's position, the employer violated his rights under Article B.1 (iii) of the Special Agreement. The employer is therefore directed to offer the grievor the opportunity to train as requested.

This is not a case where compensation is warranted. The grievor at no time was qualified for the higher paying position of lead hand. And during the period in which he would have been entitled to train he was paid at the "protected" rate of his former position as a warehouseman. Accordingly, the claim that he be compensated at the lead hand warehouseman's rate is denied.

I shall remain seized with respect to the implementation of this decision.

DAVID H. KATES,
ARBITRATOR.