

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1245

Heard at Montreal, Thursday, May 10, 1984

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim of Track Maintainer T. R. Grelowski that he should have been awarded the position of Leading Track Maintainer as advertised in Bulletin No. 20 dated 16 November 1982.

JOINT STATEMENT OF ISSUE:

Mr. Grelowski was not appointed to a Leading Track Maintainer position on account of not being qualified. Mr. D. H. Wood who was junior to Mr. Grelowski was appointed to the position on 1 December 1982.

The Union contends that the Company violated the provisions of Section 14.4 of Agreement 10.1 and requested that Mr. Grelowski be appointed to the Leading Track Maintainer position.

The Company has denied the request.

FOR THE BROTHERHOOD:

(SGD.) PAUL A. LEGROS
System Federation - General
Chairman - Eastern Lines

FOR THE COMPANY:

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

There appeared on behalf of the Company:

P. E. Scheerle	- System Labour Relations Officer, CNR, Montreal
T. D. Ferens	- Manager Labour Relations, CNR, Montreal
G. L. Edwards	- Labour Relations Assistant, CNR, Toronto
F. A. Taylor	- Track and Roadway Engineer, CNR, Hornepayne

And on behalf of the Brotherhood:

P. A. Legros	- System Federation General Chairman, BMWE, Ottawa
L. Boland	- Federation General Chairman, BMWE, London
W. Montgomery	- General Chairman, BMWE, Belleville
R. Y Gaudreau	- Vice-President, BMWE, Ottawa

AWARD OF THE ARBITRATOR

In this case the parties are agreed that Track Maintainer T. R. Grelowski was not "qualified" to have been awarded the position of Leading Track Maintainer at the time the position was bulletined. At no time prior to the posting of the position had he secured "a valid Uniform Code of Operating Rule "D" Book Certificate.

It is the trade union's position, however, that because the grievor was the most senior candidate for the position he should have been given the opportunity to qualify when the company appreciated that no qualified candidate had applied.

It is clear arbitral law that once the employer honestly and in good faith determines that a candidate (or candidates) for a bulletined position is "unqualified" the obligations imposed upon it by the collective agreement are satisfied. At that moment the employer may operate at its discretion in selecting an incumbent to fill the bulletined vacancy.

In this case, not only is it admitted that the grievor was unqualified for the position, but was notified of the requirement that he had not returned his "D" Book so that he may be examined in order to secure qualification. I do not have to answer the question in this case of whether the company acts "reasonably" in failing to delay a posting in order to enable a candidate to take his examinations once that employee has acted with diligence in returning his "D" Book. The uncontradicted evidence simply demonstrated that the grievor, once forewarned, did not comply with that requirement.

For the foregoing reasons, the grievance is denied.

DAVID H. KATES,
ARBITRATOR.