

CANADIAN RAILWAY OFFICE OF ARBITRATION

SUPPLEMENTARY AWARD

TO

CASE 1352

Heard at Montreal, Tuesday, September 10, 1985

Concerning

CANADIAN NATIONAL RAILWAYS

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

(Decided on the basis of the parties' written submissions)

There appeared on behalf of the Company:

W. W. Wilson - Manager, Labour Relations, CNR, Montreal
S. A. MacDougald - Labour Relations Officer, CNR, Montreal

And on behalf of the Brotherhood:

G. T. Murray - Representative, CBRT&GW, Moncton
J. B. Riley - Grievor

SUPPLEMENTARY AWARD OF THE ARBITRATOR

The issue in this case is whether the grievor ought to have been permitted to bump into the Automotive Equipment Clerk's assignment upon this Arbitrator's direction dated May 14, 1985, ordering Mr. Riley's reinstatement. At the crux of the matter is whether Mr. Riley would have been awarded the position in September, 1984, had he not been improperly terminated. If so, then it is incumbent upon me "to make the grievor whole" as of that date.

A letter dated October 5, 1984, from Miss V. Wheaton, for Vice-President, CN indicated to Mr. W. C. Vance, Regional Vice President, CBRT&GW, that the grievor as of that date was qualified to perform the duties of the Automotive Equipment position. At that time the requirement that an incumbent employee operate the Amis Computer System and type at 35/wpm was in place. And there is no doubt that the grievor required training to learn to operate the Amis Computer as of the date of his discharge And his typing ability was at best tentative or problematic.

Nonetheless, the employer conceded that "it was prepared to agree that the grievor was qualified to perform the duties of that position And, indeed, the employer indicated before me that incumbents, or otherwise qualified employees in that position were given the opportunity to train on the Amis computer while holding the position

and were paid accordingly. It is equally clear that an incumbent might reasonably be required to take a typing test to confirm his or her abilities. In other words, nothing has been adduced in evidence, irrespective of the grievor's shortcoming that would derogate from the company's position that the grievor was qualified as of the date he was terminated. Accordingly, he would have been able to bump a less senior employee in the Automotive Equipment's position.

The employer is accordingly directed to place the grievor in the Automotive Equipment position effective the date of his termination.

DAVID H. KATES,
ARBITRATOR.