

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1388

Heard at Montreal, Wednesday, July 10, 1985

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Request of Ms. L. Nowell of Winnipeg, Manitoba to be awarded the position of Rate Clerk.

JOINT STATEMENT OF ISSUE:

Ms. Nowell applied for a bulletined position of Rate Clerk. The Company subsequently awarded the position to an employee junior in seniority. The Company stated that Ms. Nowell lacked the qualifications required and has denied her the position.

The Brotherhood contends that Ms. Nowell was qualified for the position and therefore the Company has improperly denied her the position of Rate Clerk in violation of Article 12.12 of Agreement 5.1.

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:

S. A. MacDougald - Labour Relations Officer, CNR, Montreal
S. Williams - Labour Relations Officer, CNR, Winnipeg
B. Croxford - Co-ordinator Revenue Accounting, CNR,
Winnipeg

And on behalf of the Brotherhood:

A. Cerilli - Representative, CBRT&GW, Winnipeg

AWARD OF THE ARBITRATOR

In this case the grievor, Ms L. Nowell, grieves her being by-passed

for a less senior employee for the permanent position of Rate Clerk (251). The company's reason for the grievor's lack of success in responding to the bulletin was because she could only satisfy some of the qualifications for the job. That is to say, her having successfully completed The Coppinger Rate Training Course was not the only qualification for the Rate Clerk's position that had to be satisfied. Article 12.12 reads as follows:

"When a vacancy or new position is to be filled, it shall be awarded to the senior applicant who has the qualifications required to perform the work. Management shall be the judge of qualifications subject to the right of appeal by the employee and/or the Brotherhood. The name of the appointee and his seniority shall be shown on the next bulletin."

- 2 -

It is important to note that at no time did the grievor, as the more senior candidate, appeal the company's decision, as she was entitled, pursuant to Article 12.17:

"When a senior applicant is not awarded a bulletined position he may appeal the decision in writing, within 14 calendar days of such appointment through the grievance procedure. After making an appeal, he may be required or shall at the request of the Local Chairman be allowed to demonstrate his qualifications for the position. The Local Chairman may be present at such demonstration." (emphasis added)

Apparently, what triggered the grievor's grievance was her being awarded, shortly thereafter, the relief position of Rate Clerk. And, of course the very same qualifications required of the permanent position (251) were required for filling the relief vacancy. In other words, the trade union's case is essentially based on the notion that if the grievor was qualified for the relief position why, in the company's view, was she disqualified for the permanent position?

And, of course, the fallacy in the trade union's argument is the notion that the company concluded that Ms Nowell "qualified" for the relief position. In truth, the company concluded that no applicant that applied for the relief vacancy qualified. Nonetheless, because the grievor was the most promising of the unqualified applicants they awarded her the relief position. And, this would be consistent with its policy of encouraging such applicants to improve their credentials for qualifying for subsequent bulletined vacancies. In this regard CROA Case #604 states:

"It may be observed however, that merely appointing someone to a job in these

circumstances does not involve the implication that he is qualified for it. An unqualified person may be appointed if there are no qualified people available." (emphasis added)

In the result had the grievor felt she was legitimately qualified for the permanent Rate Clerk's position she would have invoked her seniority rights for a demonstration to prove her qualifications under Article 12.17 of the collective agreement. The fact that she didn't take advantage of this entitlement suggests to me that she initially must have agreed with the company's decision as to her lack of qualifications. The misfortune in this case was the grievor's misunderstanding that the company in its awarding her the relief position concluded she was qualified for the same position on a permanent basis.

For all the foregoing reasons the grievance is denied.

DAVID H. KATES,
ARBITRATOR.