CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1774

Heard at Montreal, Thursday, 14 April 1987

Concerning

CANADIAN NATIONAL RAILWAY

And

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Grievance concerning the decision of the Company to not allow Mr. R. Wright of Montreal, to displace on to the position of investigator, account his lack of qualifications.

JOINT STATEMENT OF ISSUE:

On 14 January 1985 Mr. R. Wright was displaced from his position of Checker-Revision in the Accounting Department at Montreal. The following day, Mr. Wright informed the Company he wished to displace onto the position of Investigator, Claims and Misroutes Unit in the Accounting Department.

Mr. Wright did not meet the requirements for this position, as set out in the Prerequisite Package which had been mutually agreed upon by the Company and the Brotherhood. Notwithstanding, upon request by Mr. Wright, the Company permitted him to demonstrate his qualifications by taking a job-related test. Subsequently, Mr. Wright was informed that his test results showed he was not qualified for the position.

The Brotherhood contends that because the Company never stipulated what the minimum required mark was to pass the job-related test, the assumed requirement was 51 per cent. Therefore, as Mr. Wright's mark on the test was 54 per cent, he should have been allowed on to the position of Investigator under the provisions of Article 12 of Agreement 5.15 and be reimbursed for any loss of wages and benefits.

The Company has declined the Brotherhood's request.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(Sgd) TOM McGRATH National Vice-President	(Sgd) J.P. GREEN for: Assistant Vice-President Labour Relations

There appeared on behalf of the Company:

S. F. McConville - Labour Relations Officer, Montreal
W. W. Wilson - Director, Labour Relations, Montreal

M. M. Boyle - Labour Relations Officer, Montreal
J. C. Graham - Observer

And on behalf of the Brotherhood:

G. Cote - Regional Vice-President, Montreal
R. Johnston - Local Chairman, Montreal
R. Emard - Local Chairman, Montreal
T. Stol - Regional Vice-President, Toronto
T. McGrath - National Vice-President, Ottawa

AWARD OF THE ARBITRATOR

The sole issue in this grievance is whether Mr. Wright had sufficient qualifications to fill the position of Investigator, Claims & Misroutes Unit in the Accounting Department. It is common ground that he did not meet the requirements for the position established in the Prerequisite Package which was negotiated between the Company and the Brotherhood to facilitate the displacement of a number of employees occasioned by a reduction in staff following a downturn in business in the early 1980s.

The Investigator's position is one of considerable importance to the Company, involving the validating and investigating of claims resulting in the recovery and payment of hundreds of thousands of dollars annually. Consequently, any error in the discharge of the functions of the Investigator's position could have serious cost ramifications for the Company.

Mr. Wright's entitlement to displace onto the position is governed by Article 12.2 of the Collective Agreement which provides as follows:

> 12.2 An employee whose position is abolished or who is displaced from his regular position, shall, qualifications being sufficient, displace a junior employee in his seniority group.

As noted above it is common ground that the grievor did not meet the prima facie qualifications established within the Prerequisite Package. Upon his request, however, it was agreed to give him an opportunity to show his qualifications by undergoing a test relating to the duties and responsibilities of the Investigator's job. It appears that Mr. Wright was not made aware in advance of what the passing standard of the test would be. It is not disputed that, in keeping with similar tests previously given within the department, the Company deemed that a grade of 75 per cent was the minimum to establish a sufficient degree of qualification for the position. Mr. Wright scored 54 per cent, in consequence of which the Company determined that he was not qualified.

The Brotherhood's position is that there has been unfairness in the treatment of Mr. Wright, and that by scoring 54 per cent he has

demonstrated a sufficient degree of qualification in the terms of Article 12.2 of the Collective Agreement. The Company, on the other hand, submits that the test result shows that the grievor was barely familiar with half the content of the job, and that his failure to achieve a mark of 75 per cent or better demonstrates his failure to have proved a reasonable standard of qualification established for the position.

The Arbitrator has difficulty with the positions of both parties. It is well established that it is the prerogative of the Company to establish qualifications for any given position, provided that the standards selected are pertinent to the duties and responsibilities of the position and that their selection and application to a given candidate are not arbitrary, discriminatory or in bad faith. When a test is utilized, it is likewise within the prerogative of the Company to determine the content of the test and the standard of success to be achieved, so long as the test meets the same standards and is administered fairly (see C.R.O.A. No. 123, 124, 308, 321, 1003 and 1005).

On the material before me I am satisfied that the content of the test administered by the Company fairly reflected the requirements of the position, and that the grade of 75 per cent is an appropriate passing standard in the circumstances. I cannot accept the Brotherhood's submission that the grievor's mark of 54 per cent should be taken as a demonstration of sufficient qualification within the meaning of Article 12.2 of the Collective Agreement.

A fundamental concern, however, is whether, with respect to Mr. Wright, the test was administered fairly. The material discloses that when he wrote the test the grievor was not advised that the passing standard was to be 75 per cent. It would seem to the Arbitrator that fairness in the administration of a test, at a minimum, must involve a number of elements: without any attempt to be exhaustive, these should include notice of the time and place of the test, some prior explanation of the type of test, such as whether it is written, oral or involves a practical demonstration, the time to be allowed for the test and, lastly, what mark will constitute a passing grade. It is not unreasonable to conclude that some individuals might bring a lesser degree of effort to the writing and completion of a test if they believe that a bare mark of fifty will constitute a pass rather than a higher mark such as sixty, seventy-five or eighty per cent. Writing a test without knowing in advance what constitutes a passing grade is not unlike beginning a race without knowing the location of the finish line. That, unfortunately, is what occurred in Mr. Wright's case. Moreover, although it is not alleged or indicated in this case, disclosing the passing standard only after a test is taken leaves the Company open to an accusation of manipulating the outcome.

For these reasons the Arbitrator finds that the grievance must succeed, but only in part. While the material does not establish that Mr. Wright demonstrated the sufficient degree of qualifications for the Investigator's position, it also discloses that the test which he was given was not administered fairly because he was not made aware, in advance, of the mark necessary for a passing grade. The Arbitrator therefore orders that the grievor be given the

opportunity of being reexamined. The form, content and duration of the grievor's second test remains, subject to the observations above, within the prerogative of the Company. For the reasons related, however, the passing grade to be achieved shall be communicated in advance to Mr. Wright.

I remain seized of this matter in the event of any dispute between the parties respecting the interpretation or implementation of this award.

April 15, 1988 (SGD) MICHEL G. PICHER
ARBITRATOR