

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2117

Heard at Montreal, Thursday, 14 February 1991

concerning

ONTARIO NORTHLAND RAILWAY

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

The appointment to Principal Clerk position Car Service.

JOINT STATEMENT OF ISSUE:

On April 9, 1990, a notice of vacancy in Car Service for the position of Principal Car Hire/Repair Clerk Jr. was posted. On April 30, 1990, a notice of appointment was posted appointing Mr. Maurice Cleroux to this position.

The Union contends that the Company appointed Mr. Cleroux to the position ahead of four senior applicants, thereby violating Article 22.3 of the Collective Agreement.

The Union requested that the notice of appointment be cancelled and the senior applicant, Mr. H. Noel, be appointed to the position with full retroactive pay to the effective date of May 2, 1990.

The Company maintains that the appointment of Mr. Cleroux was made in accordance with the terms of the Collective Agreement and denies the Union's request.

FOR THE UNION:

(SGD.) E. FOLEY  
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) P. A. DYMENT  
PRESIDENT

There appeared on behalf of the Company:

M. J. Restoule	-- Manager, Labour Relations, North Bay
G. Knox	-- Director, Human Resources, North Bay

And on behalf of the Union:

E. Foley	-- General Chairman, TCU, North Bay
D. Gillespie	-- Vice-General Chairman, North Bay

AWARD OF THE ARBITRATOR

On the basis of the material filed the Arbitrator is satisfied that the Company did not use a sufficiently effective system of evaluation in assessing the abilities of Mr. Noel and Mr. Cleroux. While I am satisfied that the elements of keyboarding, accounting, problem solving, computer experience, rail service, supervisory ability, communication skills, education and initiative were properly selected as criteria for the assessment process, the evidence before me falls short of establishing that the values in these areas ascribed to the grievor and the incumbent were arrived at by a sufficiently objective method. It is not, therefore, established to the satisfaction of the Arbitrator that Mr. Noel did not have the ability and merit to fill the position of Principal Car Hire/Repair Clerk Jr. for which he was applying. Nor is it established that he did have the requisite ability and merit. The Arbitrator therefore directs that the Company establish, in consultation with the Union, a test to be taken by both Mr. Noel and Mr. Cleroux. The purpose of the test will be to determine whether either or both of them have the requisite ability and merit to fill the position in question. While it may be that factors such as initiative, rail service and supervisory skills are less susceptible of objective testing, and may require some subjective evaluation by management, other elements such as keyboarding, accounting knowledge, computer experience and communication skills may be susceptible of evaluation through an objective test.

For the purposes of clarity, the object of the test will not be to determine whether one of the contestants is more qualified than the other, but whether each of them possesses the skill and ability requisite for the position. Should the test results disclose that the grievor does possess the necessary skill and ability he shall be awarded the position on the basis of his seniority.

February 15, 1991

(Sgd.) MICHEL G. PICHER  
ARBITRATOR