# CANADIAN RAILWAY OFFICE OF ARBITRATION

# CASE NO. 2640

Heard in Montreal, Tuesday, 13 June 1995

concerning

## CANADIAN NATIONAL RAILWAY COMPANY

and

## BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

## EX PARTE

**DISPUTE:**

The necessity of CROR qualifications for certain employee classifications.

**BROTHERHOOD'S STATEMENT OF ISSUE:**

The Company has recently taken the position that in order to hold certain positions, such as trackman, the incumbent must now possess a CROR "D" and "A" card. Employees in the affected positions who are unable to acquire the CROR qualification will only be allowed to hold temporary extra-gang positions.

The Union contends that : **1)** the imposition of this requirement is totally unnecessary from a safety standpoint.; **2)** such a requirement will cause undue hardship to those incumbents who will be unable, often on the basis of language, to obtain such qualification; **3)** such a requirement has never previously been a prerequisite for employment in these positions; **4)** The Company has unjustly dealt with the employees in question in violation of article 18.6 of Agreement 10.1

The Union requests that: **1)** The Arbitrator find in its favour and declare that the Company cannot impose the requirement that incumbents of those employee classifications in question be required to possess the CROR "D" and "A" card. **2)** In the alternative, should the Arbitrator rule against the Brotherhood's position, that the Company be required to provide adequate training in all relevant areas for each employee subsequently required to obtain the "D" or "A" book.

The Company denies the Brotherhood's contentions and declines the Union's request.

**FOR THE BROTHERHOOD:**

**(SGD.) R. A. BOWDEN**
**SYSTEM FEDERATION GENERAL CHAIRMAN**

There appeared on behalf of the Company:

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| M. E. Hughes | – System Labour Relations Officer, Montreal |
| N. Dionne | – Manager, Labour Relations, Montreal |
| I. Steeves | – District Engineer, Maritime District, Moncton |
| T. Urbanovich | – Assistant System Director, Operating Practices |
| D. Logan | – Witness |

And on behalf of the Brotherhood:

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| P. Davidson | – Counsel, Ottawa |
| R. A. Bowden | – System Federation General Chairman, Eastern Lines, Ottawa |
| G. Schneider | – System Federation General Chairman, Western Lines, Winnipeg |

A. Trudel – Federation General Chairman, Montreal

## AWARD OF THE ARBITRATOR

It appears to the Arbitrator that the substance of this dispute divides itself into two distinct parts. The first concerns the treatment of employees hired after 1978, while the second deals with employees hired prior to 1978. It is not disputed, as reflected in a memorandum dated June 19, 1978 signed on behalf of the Company's Chief Engineer that "... new employees who were hired after January 1, 1978 must qualify as Track Maintainers or be released from service." It is further not disputed that qualification in the classification of Track Maintainer for those individuals includes successfully passing the "D" Rule Book as part of the track maintainers' formal training. Further, as reflected in article 7.14 of supplemental agreement 10.8, an employee hired on or after January 1, 1978 who fails to pass the track maintainers' qualifications within a two year period is liable to be released from service. That article provides as follows:

> **7.14** A Trainee must qualify as a Track Maintainer prior to accumulating two years of cumulative compensated service. A Trainee who fails twice on the Track Maintainer's test during such two-year period will be released from service or in the case of an employee who transferred from another sub-department in Maintenance of Way service, such employee may, seniority permitting, return to his former position.

It is common ground that the Company has not enforced the terms of article 7.14 in a strict fashion. It appears that numbers of employees hired after January 1, 1978 who have not qualified as Track Maintainers have been kept on in their employment as trackmen rather than being released from service.

In the Arbitrator's view, the provisions of article 7.14, and their history as reflected, in part, in the memorandum of June 19, 1978, serve as a full answer to the primary argument of the Brotherhood, to the effect that the obtaining of "D" Book qualifications is beyond the authority of the Company to require of a trackman. As the documentation discloses, the Brotherhood effectively signed an agreement, in place since 1978, acknowledging that it is appropriate for the Company to require a trackman to obtain such qualification during the first two years of his or her employment, subject to being released from service. It may be that the Company has not enforced its strict rights in respect of that provision, to the extent that some employees have been kept on as trackmen notwithstanding that they have not qualified as track maintainers, with "D" Book qualification. However, in light of article 7.14 it can scarcely be suggested that the Company cannot properly assert "D" Book qualification as an appropriate standard at the present time. The Brotherhood must be taken to have accepted, since 1978, that "D" Book qualification is an appropriate standard to be required of any trackman within the first two years of service, at least insofar as trackmen hired after January 1, 1978 are concerned.

From an equitable standpoint, however, it does seem appropriate to the Arbitrator to make allowance for the fact that the Company has held out a less stringent standard to employees against whom the standard of article 7.14 was not applied, so that employees are not unduly surprised or inequitably treated by the Company now insisting upon the letter of agreement to enforce the higher standard of qualification. While, on the one hand, the Arbitrator is satisfied that the Company cannot be taken to have waived the standard of article 7.14 permanently for employees in respect of whom it was not strictly applied, on the other hand fairness would require that employees hired after January 1, 1978 whom the Company would now require to meet the "D" Book standard contained in article 7.14, should be allowed no less than the two year period described in that article as a reasonable time in which to qualify. Further, the requirement of qualification for any employee must, insofar as physical disabilities such as colour blindness are concerned, remain subject to the standards of *bona fide* occupational requirement, as well as the duty of reasonable accommodation, protected by the **Canadian Human Rights Act**, an issue not fully argued before me save for brief reference to the decision of this Office in **CROA 2339**.

Secondly, I turn to consider the different circumstance of employees hired prior to January 1, 1978. It seems manifest, on the basis of the agreement between the parties, as reflected in article 7.14, that the parties have long understood that employees hired prior to January 1, 1978 would not be put to the standard of being required to qualify in the "D" Book of the CROR. While it may be that the Company would, for reasons of productivity and efficiency, prefer to apply a higher standard to those employees in light of changes in its methods of track maintenance and the size of its crews, I am satisfied, on the balance of probabilities, that the collective agreement in

its present form reflects an understanding between the parties that that standard cannot be exacted of employees hired prior to January 1, 1978.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator finds and declares that the Company is entitled to require "D" Book qualification in the CROR for trackmen hired since the introduction of its training program effective January 1, 1978. However, any employee who was not released from service under the terms of section 7.14 of the supplemental agreement must, in keeping with the spirit of that article, be provided not less than a two year period from the date of this award to attain such qualification in light of the policy adopted pursuant to the Engineering Forces Reorganization, in July of 1994. Moreover, any such requirement must be subject to the provisions of the **Canadian Human Rights Act**, where applicable. Secondly, the Arbitrator finds and declares that the Company cannot require persons holding the rank of trackman whose date of hire precedes January 1, 1978 to qualify for the "D" Book level of the CROR as a requirement of their continued employment as a trackman.

On the basis of the material before me I cannot find, as the Brotherhood submits, that the Company's obligation in respect of training must extend to providing translation services for either training or testing employees. Firstly, it would appear manifest that qualification in the "A" Book or "D" Book level of the CROR is conditioned upon an ability to read, understand and apply either the French or English version of the rules. It is not disputed that the Company does and will provide substantive training for any employees who are required to qualify in either the "A" Book or "D" Book. There is, however, before me no evidence, nor any provision of the collective agreement, to substantiate the claim of the Brotherhood that such training has been or should be provided in languages other than the two official languages of Canada in which the rules are promulgated. The Arbitrator therefore deems it appropriate to make no further direction in respect of that claim.

Finally, this decision and the redress directed rest on the conclusion that the Company has exceeded its management's rights as circumscribed by the provisions of the collective agreement in generally requiring "D" Book qualification for all trackmen. The Arbitrator therefore need not deal with the separate allegation that the employees in question where unjustly dealt with in violation of article 18.6, assuming that that is an arbitrable issue.

16 June 1995

**(signed) MICHEL G. PICHER**
**ARBITRATOR**