

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.253

Heard at Montreal, Tuesday, November 10th, 1970

Concerning

CANADIAN PACIFIC EXPRESS COMPANY (CP EXPRESS)

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT  
HANDLERS,  
EXPRESS AND STATION EMPLOYEES

DISPUTE:

Claim of employee H. L. Colby, Obico Terminal that starting time of his assignment was altered from 6:00 a.m. to 8:30 a.m. without being cancelled and re-bulletined.

JOINT STATEMENT OF ISSUE:

Employee Colby was awarded a position of Warehouseman, Days, Toronto, on Bulletin No.3 dated January 22, 1962, hours 6:00 a.m. to 2:30 p.m.

A series of changes in the hours of this position eventually resulted in the hours becoming 8:30 a.m. to 5:00 p.m. effective December 30, 1969.

Article 7.2, Bulletining of Positions, Clause (q) of Agreement reads:

"When the regular hours of a permanent position are changed and affect the starting or ending time by more than one hour and 30 minutes and/or assigned rest days are altered the position will be re-bulletined promptly, but only to the local seniority group concerned".

At issue is whether or not the "regular hours" of a position means in all cases the hours of such position as shown the last time such position was bulletined.

FOR THE EMPLOYEES:

(SGD.) L. M. PETERSON  
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. T. HARFORD  
DIRECTOR, PERSONNEL

There appeared on behalf of the Company:

F. E. Adlam	-	Industrial Relations Representative, CP Express, Toronto
J. T. Harford	-	Director Personnel, CP Express, Toronto
D. R. Smith	-	Regional Manager, CP Express, Montreal
J. G. MacMillan	-	Supervisor Personnel, CP Express, Toronto

And on behalf of the Brotherhood:

L. M. Peterson	-	General Chairman, B.R.A.C., Toronto
F. C. Sowery	-	Vice General Chairman, B.R.A.C., Montreal
M. Peloquin	-	Admn. Asst. to Int'l. Vice Pres., B.R.A.C., Montreal
V. P. Gray	-	Grand Lodge Organizer, B.R.A.C., Toronto
G. Duval	-	Local Chairman, Lo. 2303, B.H.A.C., Montreal

#### AWARD OF THE ARBITRATOR

The change which occurred effective December 30, 1969 was from a schedule of 7:00 a.m. - 3:30 p.m. to one of 8:30 a.m. - 5:00 p.m. This change in itself would not come within the scope of article 7.2 and would not require a rebulletining of the position - that is, if the hours immediately preceding any change are the hours referred to by the phrase "the regular hours of a permanent position". It was the company's contention that that phrase did indeed mean the regular hours currently in effect at the time of a change.

In my view, this is not a reasonable interpretation of article 7.2 of the collective agreement. That article is clearly intended to provide some sort of protection to the employee who has bid on a job with a particular starting and ending time. Major changes in those times could drastically affect the character of the employment, and the desirability of the job. It would be contrary to the obvious purpose of the provision to allow the company, by a series of changes of times of less than one hour and thirty minutes, to change the schedule without posting the job, where they could not have done so in one change of hours. It seems clear to me that the bulletined hours constitute the hours of the job, and that these may be changed by as much as one hour and thirty minutes without posting, but where the hours are changed in excess of that limit, a further posting is necessary. It would be no answer to say that one of the parties had forgotten what the posted hours were. That is simply an element of the case, to be established as any other fact. In the instant case it is set out in the Joint Statement of Issue that the bulletined hours for the job in question were from 6:00 a.m. to 2:30 p.m. Those were the regular hours of the permanent position which the grievor was awarded. Now the hours are from 8:30 a.m. to 5:00 p.m. Obviously they have been changed, and they affect the starting and ending time by more than one hour and thirty minutes. Previous changes in the hours had not had this effect, but the effect has now been achieved, and, in my view, quite clearly comes within article 7.2 (q).

For these reasons it is my award that the assignment in question ought to have been cancelled and rebulletined promptly, upon the changes being made effective December 30, 1969. That should now be done forthwith.

J. F. W. WEATHERILL  
ARBITRATOR