

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 272

Heard at Montreal, Tuesday, April 13th, 1971

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (CP TRANSPORT)

and

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

DISPUTE:

Concerning the interpretation and application of Article VII of the  
Master Agreement of March 14, 1967.

JOINT STATEMENT OF ISSUE.

In recent years, various staff reductions took place at Moose Jaw,  
Saskatchewan.

The Union contends that the provisions of Clause 1 (a) and (b) of  
Article VII of the Master Agreement of March 14, 1967 should have  
applied.

The Company contends that the provisions of Clauses 1 to 4 inclusive  
of said Article VII did not apply.

FOR THE EMPLOYEES:

(SGD.) L. M. PETERSON  
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) C. C. BAKER  
DIRECTOR, PERSONNEL AND  
INDUSTRIAL RELATIONS

here appeared on behalf of the Company.

C. C. Baker	Director, Personnel & Industrial Relations, CP Transport, Vancouver
D. Cardi	Labour Relations Officer, C.P.R., Montreal

And on behalf of the Brotherhood:

L. M. Peterson	General Chairman, B.R.A.C., Don Mills, Ont.
W.C.Y. McGregor	International Vice President, B.R.A.C., Montreal
F. C. Sowery	Vice General Chairman, B.R.A.C., Montreal
G. Moore	" " " " Toronto

#### AWARD OF THE ARBITRATOR

The material provisions of Article VII of the Master Agreement of March 14, 1967, are as follows:

"1. It is agreed between the parties that on the introduction by the Company of technological, operational and/or organizational changes the following provisions will apply:

- (a) the Company will not put into effect any such change which is likely to be of a permanent nature and which may effect a material change in working conditions with adverse effects on employees covered by this agreement without giving as much advance notice as possible of any such proposed change to the unions concerned and, in any event, not less than 90 days if a relocation of employees is involved and 60 days' notice in other cases, with a full description thereof and with appropriate details as to the consequent changes in working conditions and the number of employees who would be adversely affected;
- (b) that it will negotiate with the Unions measures to minimize the adverse effects of the proposed change on employees, which measures may, for example, be with respect to severance, loss of wages, expenses of moving and travelling of employees required to relocate, retraining and the merging of seniority lists withIn organizations and/or such other measures as may be appropriate in the circumstances.

5. These provisions do not cover cases where.

- (a) workers are affected by a recognizable general decline in business activity, such as a recession or by fluctuations in traffic;
- (b) the workers affected are casual workers subject to irregular employment because of the nature of the work they perform or seasonal employees outside their normal period of employment,
- (c) there is a normal reassignment arising out of the nature of the work in which the employees are engaged."

The issue in this case is whether the "various staff reductions" which took place "in recent years" at Moose Jaw constitute "technological, operational and/or organizational changes" within the meaning of the article. Article VII, in the respects material to this case, is similar in its effect to the provisions considered in Case No. 228, and other cases there referred to. In this case, the changes which have taken place have been staff reductions. These reductions have been associated with declines in the volume of traffic at Moose Jaw. This decline, and the reductions in staff, have occurred over a period of time beginning before Article VII was agreed to. On this basis alone it would have to be said that the grievance must fail at least in part, and no basis was put forward for distinguishing one part from another.

More generally, however, as in Case No. 228, what has happened has been that the employees concerned have been affected by a general decline in business activity, that is, by "fluctuations in traffic", within the meaning of Article VII (5) (a). As in the case of the cancellation of trains in Case No. 228, it may be doubted whether reductions in staff occurring over a period of time constitute operational changes within the meaning of Article VII, but in any event they do not come within the article in this case because of the express provision of Clause 5. Clearly, "fluctuations" include "general declines". The clause does not apply, as the Union suggested, simply to those fluctuations which may be hoped to reverse themselves.

In the instant case, it must be held that the provisions of Article VII do not apply, and that it was not incumbent on the Company to give notice under Clause 1. The grievance is accordingly dismissed.

J. F. W. WEATHERILL  
ARBITRATOR