

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.318

Heard at Montreal, Tuesday, November 9th, 1971

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (CP TRANSPORT)

and

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

DISPUTE:

Claim of employee E. Hrabarchuk of Winnipeg, Manitoba, for
maintenance of basic rate of pay as per Article VIII, Section 7, of
the Job Security Agreement dated January

JOINT STATEMENT OF ISSUE:

On July 2, 1969, the Company commenced operating a highway service
out of Flin Flon. Such service was cancelled after the trip of
August 4, 1969 (a total of fifteen trips).

The Brotherhood contends that this cancellation is covered by Article
VIII, Section I, of the Job Security Agreement of January 29, 1969,
while the Company contends that it is not.

FOR THE EMPLOYEES:

(SGD.) L. M. PETERSON
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There 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., Toronto
F. C. Sowery	Vice General Chairman, B.R.A.C., Montreal
G. Moore	Vice General Chairman, B.R.A.C., Toronto

AWARD OF THE ARBITRATOR

In this case, two issues arise. First, whether the cancellation of the service on which the grievor was engaged was a "technological, operational or organizational change" within the meaning of Article VIII of the job security agreement, and second, if it was such a change, whether the position lost by the grievor had been "permanently" held, so that he would be entitled to the benefit of maintenance of rights pursuant to clause 7 of Article VIII.

The grievor had held a bulletined position as a driver working between Flin Flon, Manitoba and Hanson Lake, Saskatchewan. At about the end of June, 1969, that route was cancelled. At about the same time the company commenced operation of new route between Flin Flon and Prince Albert and the grievor, the only employee at Flin Flon, was assigned to it. It is the cancellation of this latter assignment which has led to the present grievance.

There have been a number of cases dealing with the question whether abolition of a position constitutes an operational or organizational change within the meaning of Article VIII. The grievances in those cases have been allowed or dismissed having regard to the particular circumstances involved. The mere cancellation of a train (and the same could be true of a highway run) is not necessarily an organizational or operational change within the meaning of Article VIII. There are, as was pointed out in Case No. 228 (referring to the provisions of the collective agreement there applicable) provisions relating to the normal creation and abolition of Jobs. Similar provisions appear in the collective agreement in this case.

The route here in question was established by the company on a trial basis. After the brief period referred to, it was determined that a regular service could not be justified. It may be noted that the grievor himself, very commendably, seems to have put forth considerable effort to make the route successful, but in any event the determination was made that it could not continue, and the wisdom or otherwise of that decision is not for me to consider. The question is whether the cancellation of the service constituted an operational or organizational change, and it is clear to me that it was not. It was simply the discontinuance of routine operations on grounds of insufficient business. There are not present the somewhat special features of, for example, Cases, 271, 286 or 289. The analogy, if one is to be found is rather with Cases 228 and 284.

Since, in my view, this is not a situation to which Article VIII of the job security agreement applies, it is not necessary to determine whether the grievor held the position "permanently" or not.

For the reasons set out above, the grievance is dismissed.

J. F. W. WEATHERILL
ARBITRATOR