CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 409

Heard at Montreal, Tuesday, June 12th, 1973

Concerning

CANADIAN PACIFIC TRANSPORT COMPANY LIMITED

and

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

EXPARTE

DISPUTE:

Claims for loss of wages by employees in a number of offices account notice of temporary suspension of regular positions.

EMPLOYEES' STATEMENT OF ISSUE:

The Company issued notices of temporary suspensions of regular positions.

Notice was given under Article 15.9, of the Agreement.

ARTICLE 15.9

"Regularly assigned employees (those who have regularly assignments and report for duty each day of their assignment without notification, including employees contemplated in Clause 11.7) Who are unable to establish themselves as a result of staff reduction shall be given as much notice of lay off as possible and, in any case, not less than forty-eight (48) hours, and unassigned employees (those who report for duty as required or notified due to their work being irregular) shall be given as much notice as possible. The forty-eight (48) hour period of notice may be given during the tour of duty or while employees are off duty due to vacation, bona fide illness or leave of absence, but shall be excluslve of assigned rest days and statutory holidays specified in Clause 8.1."

The Brotherhood contend these notices should have been given under Article 15.10 of the Agreement.

ARTICLE 15.10

"When regularly assigned positions are to be abolished, four working days' advance notice will be given, except in the event of a strike or a work stoppage in the Railway industry in which case a shorter notice may be given."

FOR THE EMPLOYEES:

(SGD.) L. M. PETERSON
GENERAL CHAIRMAN

There appeared on behalf of the Company:

C. C. Baker	Director, Labour Relations & Personnel, CP Transport, Van.
D. Cardi	Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

L. M. Peterson	General Chairman, B.R.A.C., Toronto
G. Moore	Vice General Chairman, B.R.A.C., Toronto
F. C. Sowery	Vice General Chairman, B.R.A.C., Montreal
W. McNeely	Gen. Secy. Treasurer, B.R.A.C., Toronto

INTERIM AWARD OF THE ARBITRATOR

The Company has raised a preliminary objection going to the arbitrability of this matter. This award deals only with the preliminary objections.

The Union has sought to proceed to arbitration "ex parte" and seeks to submit a separate statement, as contemplated by Article 8 of the agreement amending and renewing the Foundlng Agreement establishing the Canadian Railway Office of Arbitration. Article 8 provides as follows:

> "8 The Joint Statement of Issue referred to in Clause 5 hereof shall contain the facts of the dispute and reference to the specific provision or provisions of the collective agreement where it is alleged that the collective agreement has been misinterpreted or violated. In the event that the parties cannot agree upon such joint statement either or each upon forty-eight (48) hours' notice in writing to the other may apply to the Arbitrator for permission to submit a separate statement and proceed to a hearing. The Arbitrator shall have the sole authority to grant or refuse such application."

The instant case involves a number of claims which, it seems, we the subject of grievances as contemplated by the collective agreement. In any event, there is no objection relating to the processing of these claims through the grievance procedure. On April 12, 1973 a proposed Joint Statement of Issue was mailed by the Union to the Company. Before this was in fact received by the appropriate Company official, a request for such Joint Statement was mailed by the Company to the Union, on April 16, 1973. Without any further steps being taken, the Union made ex parte application to the Canadian Railway Office of Arbitration on May 3, 1973.

While this matter is admittedly an arbitrable one, and while it is not disputed that the matter is otherwise properly before the Canadian Railway Office of Arbitration, it is contended that there was not sufficient notice for the matter to proceed ex parte. It is clear to me that this objection is well taken. The Union submitted the case ex parte without having given the requisite notice. The matter is not, therefore, properly before me on that basis. This is not to say, however that the grievance must be dismissed, since the objection goes, not to the timeliness or arbitrability of the question, but only to the particular procedure that was used, and it is not contended that the matter is not properly at the arbitration stage.

The effect of the objection, which must be sustained, is to strike out the ex parte statement of issue. The sustaining of that objection does not require any other conclusion as to the status of the grievance, which may be processed in the usual way. In order to avoid undue delay, however, it should be recognized that the submission of the ex parte statement constitutes an application for permission to submit such statement, which application is granted. The matter will therefore be listed for hearing on the ex parte application at the next sittings of the Office of Arbitration. Nothing herein prevents the parties from agreeing, if they wish to do so, on a Joint Statement of Issue for presentation at that time.

J.F.W. WEATHERILL
ARBITRATOR

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There appeared on behalf of the Company - Tuesday, July lOth, 1973.

C. C. Baker	Director, Labour Relations & Personnel - CP Transport Vancouver

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

AWARD OF THE ARBITRATOR

On various dates in December, 1972, the Company posted notices to the effect that certain drivers' jobs would be "temporarily suspended" during the holiday period. Work in those classifications would be performed on an "as required" basis. Such notices were posted at Winnipeg, Weyburn, Moose Jaw, Yorkton, Saskatoon and Regina. These notices, in the Company's view, were properly posted in compliance with Article 15.9 of the collective agreement, although in one case the notice was less than forty-eight hours.

Article 15.9 is set out in the Employees' Statement of Issue, above. In my view, it does not apply to the circumstances in question. It provides for the giving of notice of lay-off to employees "who are unable to establish themselves as a result of staff reduction". In the instant case, while such a notice may have had to be given to certain employees as a result of the staff reductions contemplated over the holiday period, it was premature in the circumstances in question, because Article 15.9 contemplates the sort of situation which may exist after there has been a notice of abolition of particular jobs.

Article 15 of the collective agreement deals generally with the matter of reduction and increase of staff. The general principle that seniority subject to qualifications, shall govern when forces are reduced, is set out in Article 15.1. Article 15.2 deals with the case of an employee whose position is abolished or who is displaced, and that and the following articles deal with the exercise of such person's seniority rights. Subsequent articles deal with their return to service. Article 15.9, as I have indicated, deals with the case of the employee who is unable to establish himself, that is, whose exercise of seniority rights pursuant to the provisions mentioned has not been of any avail. Finally, article 15.10 deals with the notice to be given "when regularly assigned positions are to be abolished".

In the instant case, work in certain regularly assigned positions was "temporarily suspended". They were not "abolished" in the ordinary sense of the term, in that the Company intended to maintain, over the long run, its regular complement of employees in those classifications. The Company, understandably perhaps, did not wish to go through the procedure of "abolishing" such jobs for the sake of trimming its force to meet seasonal requirements, only to have to go through the bulletining process all over again immediately thereafter. There can be no doubt, however, that there was a reduction in forces, and that the employees affected were entitled to exercise their seniority rights. Those rights are as set forth in Article 15.

In Case No. 191, a driver's route was cancelled for two days because of business requirements resulting from the Victoria Day holiday, it was held that it could not properly be said that the route was "abolished". The employee was, however, displaced from his permanent position and was entitled to exercise seniority rights. He was not entitled to be paid as though his regular assignment had continued on the days when he was temporarily laid off from it.

In my view the same reasoning applies in the instant case. The employees in question were entitled to exercise their seniority rights with respect to the period for which their regular jobs were cancelled. These jobs however, remained their "regularly assigned positions" and were not abolished. If, as a result of the exercise of seniority by these employees, other regularly assigned employees were laid off, then those employees would, I think, be entitled to forty-eight hours' notice. This is a point which was not dealt with in Case No. 191.

In the result, while I cannot accept the Union's contention that

Article 15.10 applies in the circumstances of this case, and while, for the reasons set out earlier, I think that Article 15.9 was not properly invoked with respect to the cancellation of particular Jobs, it is nevertheless my conclusion that Article 15.9 does require at least forty-eight hours' notice to regularly assigned employees who are to be laid off. There may then be case of employees who did not receive such notice, and with respect to those cases, the grievance is allowed. It should be noted that employees whose work was put on an "as required" basis remained regularly assigned employees for the purposes of Article 15.9, since their positions were not abolished.

For the foregoing reasons, the grievance is denied, except with respect to any cases which may come within the scope of the preceding paragraph in which cases the grievance is allowed.

J. F. W. WEATHERILL
ARBITRATOR