

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 457

Heard at Montreal, Tuesday, September 10, 1974

Concerning

CANADIAN PACIFIC TRANSPORT COMPANY LIMITED
CP TRANSPORT (WESTERN DIVISION)

and

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

DISPUTE:

The matter of "Homestead Rights" for certain mileage-rated drivers in Alberta and British Columbia is beyond the terms of the collective agreement and should be declared null and void.

JOINT STATEMENT OF ISSUE:

The Union claims the original collective agreement made no provision for "Homestead Rights".

A letter was written, the Company, by the then General Chairman outlining his observations on several matters.

These were not written into any reprinting, or revision, of the collective agreement, therefore, "Homestead Rights" were temporary and no long exist.

The Company has declined to cancel the "Homestead Rights".

FOR THE EMPLOYEES:

(SGD.) L. M. PETERSON
GENERAL CHAIRMAN

FOR THE COMPANY:

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

There appeared on behalf of the Company:

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

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
R. Welch - General Chairman, B.R.A.C., Vancouver

AWARD OF THE ARBITRATOR

In 1962 an agreement was made between the parties providing for "homestead rights" for certain employees, and protecting them from the displacement by senior employees to which they might otherwise be subject. The creation of these "homestead rights" must be considered as having been an amendment to the collective agreement, and as an exception to the seniority provisions therein.

The employees concerned have been treated as having been entitled to "homestead rights", but in fact the collective agreement now in force makes no mention thereof, and the exercise of such rights would be contrary to the provisions of the collective agreement. The provisions of the collective agreement relating to seniority have undergone certain changes since 1962, but neither the provisions of the agreement with respect to "homestead rights", nor their effect, has been incorporated in the collective agreement. Certain "understandings and agreements" previously made have been attached to the collective agreement, but the agreement relating to "homestead rights" is not among these. There is no general provision having the effect of keeping alive any previous practices or agreements not dealt with in the collective agreement, and it would in any event be difficult to give effect to an agreement whose terms are in conflict with those of the collective agreement.

It is the collective agreement which binds the parties and which must govern this award. Having regard to the foregoing, it must be my conclusion that "homestead rights" are not conferred by the collective agreement and are indeed inconsistent with it, and I so declare.

J. F. W. WEATHERILL
ARBITRATOR