

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 705

Heard at Montreal, Thursday, April 12th, 1979

Concerning

CANADIAN PACIFIC EXPRESS LTD.

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT
HANDLERS,
EXPRESS AND STATION EMPLOYEES-SY. BOARD #517

DISPUTE:

Loss of time on two positions cancelled by a four-day notice while the positions were under a three-month notice as required by Article VIII Job Security Agreement.

JOINT STATEMENT OF ISSUE:

November 4, 1977, a notice was issued giving three months' notice account possible changes due to CP Transport change of operation at Saskatoon, Saskatchewan:

Two (2) positions (Junior) - Warehouseman-Vehicleman.

December 9, 1977, Terminal Manager, J. Brent, issued a four working day notice that positions in Saskatoon would not be required December 23 to December 27, 1977, December 30 and 31, 1977 and January 1 and 2, 1978.

The Brotherhood contend the two positions listed in the notice of November 4, 1977 could not be cancelled by the notice of December 9, 1977.

The Company contend they were within their rights to do so.

FOR THE EMPLOYEES:

(SGD.) J. J. BOYCE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. R. SMITH
DIRECTOR, INDUSTRIAL RELATIONS
PERSONNEL & ADMINISTRATION

There appeared on behalf of the Company:

D. R. Smith - Director, Industrial Relations, Personnel
and Administration, CP Express, Toronto

B. D. Neill - Manager Labour Relations, CP Express,

Toronto
S. J. Samosinski - Labour Relations Officer - Montreal
D. Cardi - Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

G. Moore - Vice General Chairman, B.R.A.C., Moose Jaw
F. W. McNeely - General Secretary Treasurer, B.R.A.C.,
Toronto
J. Crabb - Vice General Chairman, B.R.A.C., Toronto

AWARD OF THE ARBITRATOR

The notice given on November 4, 1977, was a notice pursuant to Article 8 of the Job Security Agreement. It put the employees affected on notice that a technological, operational or organizational change of a permanent nature was planned, which would have adverse effects on them. The employees were, as a result, entitled to "protection" of their jobs and benefits throughout the three-month period.

This did not mean that the Company might not proceed to make the change in less than the period provided for; it did mean, however, that if such a change were made before the three months contemplated had expired, the employees would be entitled to be made whole. The giving of notice under Article 8 of the Job Security Agreement does not, however, create an absolute guarantee of employment or of earnings for any period, nor does it affect the general application of the provisions of a collective agreement.

There is nothing in the material before me to indicate whether or not the proposed technological, operational or organizational change took place. During the three-month notice period, however, there did occur a general lay-off of employees at the Saskatoon terminal. This lay-off affected all employees, and not just those who had been affected by the notice under Article 8 of the Job Security Agreement. It was not the implementation of a "technological, operational or organizational change". It was subject to the provisions of Article 7.3.8 of the collective agreement, requiring that certain notice be given, and those provisions, it appears, were complied with. The Saskatoon terminal was closed for the five-day period from December 23 to December 27, 1977, and for the four-day period from December 30, 1977 to January 2, 1978. In view of the normal closing on Saturdays, Sundays and holidays, the actual lay-off appears to have been for two days. Whether such a lay-off was entirely justifiable on business grounds or not, is not in issue before me. It would appear to have been a "normal seasonal staff adjustment", but in any event it was not the technological, operational or organizational change of which notice had been given. That notice of November 4, 1977, protected the employees concerned against the early implementation of such a change, but it did not protect them against the ordinary occurrences of their work. In particular, it did not protect them against the brief closing of the terminal over the holiday season. That "adverse effect" was quite unrelated to the

technological, operational or organizational change, and was not something against which the employees were protected by the Job Security agreement.

There was, therefore, no violation of that agreement in the circumstances, and the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR