

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 735

Heard at Montreal, Wednesday, December 12, 1979

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

BROTHERHOOD OF RAILWAY AIRLINE AND STEAMSHIP CLERKS FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYEES - SYSTEM BRD. OF
ADJUSTMENT #15

EXPARTE

DISPUTE

Bulletining of positions as temporary due to the incumbent being off
sick.

EMPLOYEE'S STATEMENT OF ISSUE

Train Dispatcher D. A. Nason of Saint John, N.B. booked off account
illness and his position was bulletined temporary for an expected
period of approximately three months.

The Brotherhood contends that this is a direct violation of Article
6.01.01 of the Collective Agreement.

The Company denied the grievance.

FOR THE EMPLOYEE:

(SGD.) D. C. DUQUETTE
GENERAL CHAIRMAN

There appeared on behalf of the Company:

J. A. McGuire	Manager, Labour Relations, CP Rail, Montreal
M. M. Yorston	Labour Relations Officer,
R. R. O'Meara	Assistant Supervisor Labour Relations, CP Rail, Montreal

And on behalf of the Brotherhood:

D. C. Duquette	General Chairman, B.R.A.C., Montreal
J. A. Webb	Local Chairman, B.R.A.C., Saint John, N.B.
J. G. Belhumeur	' ' Montreal
G. D. Marson	Local Representative, BRAC, Brownville Jct., Me.

AWARD OF THE ARBITRATOR

Article 6 of the collective agreement deals generally with the matter
of bulletins and appointments. Article 8 deals with the seniority

rights of dispatchers and traffic supervisors. It is contemplated in many sections of Article 8 that there may be temporary, as well as permanent positions. It may be noted that by Article 8.07 spare dispatchers are required to exercise their seniority (or forfeit it), on advertised vacancies as dispatchers.

Articles 6.01 and 6.01.01 of the collective agreement are as follows:

"6.01 Except as provided in Article 7.16, all vacancies and appointments for sixty calendar days or over will be bulletined immediately by "23" message over the seniority district on which they occur; and when allotted shall be known as established positions. Positions advertised as temporary will be bulletined as permanent at the expiration of one year unless otherwise mutually agreed between the Superintendent and the Local Chairman. If it is known prior to the expiration of one year that the position will be required permanently, it shall be so bulletined."

"6.01.01 This rule will not apply in cases of sickness and/or disability except as mutually agreed between the Superintendent and the Local Chairman."

Article 7.16 is not material to this case.

When, in the instant case, a regular dispatcher booked sick, the Company sought to replace him by bulletining the job on a temporary basis. Certainly, Article 6.01 contemplates that there may be temporary positions. Where a temporary position has existed for a year, however, it must be bulletined as permanent, unless there is agreement to the contrary between the parties. It is the Union's position, however, that in cases of sickness - and the instant case is such - Article 6.01 does not apply at all, except as mutually agreed between the Superintendent and the Local Chairman.

The issue is one of interpretation of the scope of Article 6.01.01. More particularly, it is one of determining what is referred to by the words "this rule" as they appear in Article 6.01.01. There is no doubt that they refer to Article 6.01, but it is not at once clear whether they refer to that article as a whole, or to the latter part of it, dealing with the requirement of making a temporary position a permanent one. The Union's position is that the former interpretation is correct: that "this rule" as referred to in Article 6.01.01 means Article 6.01 as a whole. The Company's position is that the latter interpretation is correct, and that "this rule" refers to the matter of making temporary positions permanent.

As a matter of grammatical construction, Article 6.01.01 is capable of supporting either construction. Article 6.01 is, in general, a "rule" relating to vacancies and appointments. At the same time, it contains several particular "rules" relating to certain cases in which bulletins may be issued. The reference in Article 6.01.01 to "this" rule could be taken as a reference to the whole immediately preceding article, or as a reference to the immediately preceding "rule" of the several contained in the article.

The parties referred both to the history of Articles 6.01 and 6.01.01

as they have appeared in collective agreements over the years, and to the past practice with respect to their application. The past practice, it appears, varies from one region to another, and does not help in revealing what the parties really intended. Reference to the evolution of the articles in question over the years is, however, helpful.

Article 2(c) of the June 16, 1927 collective agreement Was as follows:

"All vacancies and appointments for sixty (60) days or over will be bulletined by "23'' message over the General Superintendent's district on which they occur, and when allotted shall be known as established positions. A position bulletined as temporary after having been continuously established for one year shall be bulletined as a permanent position unless it is known at the time that the position will only continue to be required temporarily, if it is known prior to the expiration of one year that the position will be required permanently it shall be so bulletined except as provided in Clause (b) or in case of sickness."

Clause (b) is not material in this case. Article 2(c) set out the general requirement which exists to this day: bulletins must be issued with respect to vacancies and appointments of over sixty days' duration. It was contemplated, then as now, that some positions (although of more than sixty days; might be temporary. Care was taken, then as now, to deal with the case where a temporary position in fact became a permanent one, the dividing line being the lapse of one year. Even then, the case of the truly temporary position which nevertheless lasted somewhat more than a year was provided for and finally, it was provided that "if it is known prior to the expiration of one year that the position will be required permanently it shall be so bulletined except -- in case of sickness". This last provision, it will be apparent is the ancestor both of the last sentence of Article 6.01, and of Article 6.01.01 of the present collective agreement.

Under the 1927 agreement, then, the Company was required to bulletin all vacancies of more than sixty days. Some of those might be bulletined, if appropriate, as temporary positions. Where the Company realized that such a temporary position would in fact be permanent, it was then required to bulletin the position as a permanent one, except in cases of sickness. In such cases, it would seem (at least prior to the expiration of a year), the position would continue to be a "temporary'' one.

The rule was revised in 1947, to read as follows.

"All vacancies and appointments for sixty (60) calendar days or over will be bulletined immediately by "23'' message over the General Superintendent's district on which they occur, and when allotted shall be known as established positions. Positions advertised as temporary will be bulletined as

permanent at the expiration of one year unless otherwise mutually agreed between the Superintendent and Local Chairman. If it is knowr prior to the expiration of one year that the position will be required permanently, it shall be so bulletined, except in cases of sickness and/or disability."

Apart from the elimination of the reference to "clause (b.)", which is immaterial to this case, it is clear that the effect of the change in wording was to remove from the Company the right of determination of whether or not a temporary position which had been established for a year was still only required temporarily and to make the matter one for agreement between the parties. The article still provided, although now in a separate sentence, that where the Company realized that a temporary position would in fact be permanent it was required to bulletin the position as permanent - except in cases of sickness where, as before, the position would, it seems, continue to be temporary.

In 1963 the article was changed to provide for bulletining over the "Seniority District"; otherwise it remained as it had been in 1947.

In 1965 the article was changed to read as follows:

"All vacancies and appointments for sixty calendar days or over will be bulletined immediately by "23" message over the seniority district on which they occur; and when allotted shall be known as established positions. Positions advertised as temporary will be bulletined as permanent at the expiration of one year unless otherwise mutually agreed between the superintendent and the District Chairman. If it is known prior to the expiration of one year that the position will be required permanently, it shall be so bulletined. This rule will not apply in cases of sickness and/or disability except as mutually agreed between the superintendent and District Chairman."

The significant changes, for the purposes of determining the issue in this case, were that what had been the concluding sentence of the article in the 1947 (and 1963) agreements became two sentences, and that the exception in cases of sickness was itself subJect to the exception of mutual agreement between the parties. As to the first change it is my view that when the evolution of the wording of the article is considered, the expression "this rule" as it is used in the last sentence of the article refers to the preceding sentence, and not to the article as a whole. It is simply a restatement and amendment of an exception which had previously been embodied in a single sentence. The practical effect of the change was to provide that, where the Company realized that a temporary position would in fact be permanent, it was required to bulletin the position as permanent except (as before) in cases of sickness - in which case there might now be mutual agreement between the parties as to what should be done. This did not alter the general requirement that all vacancies of over sixty days be bulletined.

In 1975 the collective agreement was rewritten, and a system of decimal numbering was adopted. The two concluding sentences of the

1965 article (being it will be recalled, the successors to the last sentence of the 1947 article), were separated, the last sentence (the provision for mutual agreement in cases of sickness) now appearing as Article 6.01.01. In my view, this change of form should not be read as implying one of substance. Such a change should be regarded as having altered the general obligation to bulletin all vacancies of sixty days or more. Any alteration of such an important obligation as that would surely have been effected by clear language, and not simply by the stylistic device of re-numbering.

Accordingly, when the evolution of the article is considered, it is my view that the ambiguity in Article 6.01.01 is resolved. Where it refers to "this rule", it refers to the rule requiring that certain temporary vacancies be made permanent. It does not refer to article 6.01 as a whole, and in particular it does not alter the general rule requiring that vacancies of more than sixty days be bulletined.

For the foregoing reasons it is my conclusion that the Company did not violate the collective agreement in issuing the bulletin in question. Accordingly, the grievance must be dismissed.

J.F.W. WEATHERILL
ARBITRATOR