CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.746

Heard at Montreal, Tuesday, March 11,1980

Concerning

CANADIAN PACIFIC EXPRESS LTD.

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS,
EXPRESS AND STATION EMPLOYEES - SYSTEM BRD. OF ADJ. #517

DISPUTE:

Interpretation of Article 6.2.4 of the Collective Agreement, for the establishment of seniority as a permanent employee.

JOINT STATEMENT OF ISSUE:

The Union contends that a new employee becomes permanently employed upon completion of 65 working days cumulative service, regardless of the actual hours worked during this period.

The Company contends that in order for a new employee to be regarded as permanently employed he must complete 65 working days cumulative service and that eight consecutive hours exclusive of meal period constitutes a day's work.

This dispute was progressed in accordance with the Grievance Procedure.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. J. BOYCE	(SGD.) D. R. SMITH
GENERAL CHAIRMAN	DIRECTOR, INDUSTREAL REL'S PERSONNEL & ADMINISTRATION

There appeared on behalf of the Company:

D. R. Smith	- Director Industrial Relations, Personnel and Administration, CP Express Ltd., Toronto
S.J.Samosinski	- Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

J. J. Boyce	- General Chairman, B.R.A.C., Don Mills, Ont.
F. W. McNeely	- Gen. Secy. Treasurer, B.R.A.C., Toronto
J. Crabb	- Vice General Chairman, B.R.A.C., Toronto

AWARD OF THE ARBITRATOR

Article 6.2.4 provides as follows:

> "6.2.4 A new employee shall not be regarded as permanently employed until completion of 65 working days cumulative service. In the meantime, unless removed for cause which in the opinion of the Company renders him undesirable for its service, the employee shall accumulate seniority from the date first employed on a position covered by this Agreement.
>
> An employee with more than 65 working days cumulative service shall not be discharged without being given a proper investigation as provided in Article 8 of this Agreement."

The issue is as to what is meant by the words "completion of 65 working days cumulative service". More particularly, the issue appears to be as to the meaning of the expression "working days".

Certainly, seniority standing, or "permanent employment" is not achieved by the mere lapse of time from the date of first employment. A person may be hired, and then work either regularly or irregularly until the requisite number of "working days" have been accumulated in the service of the Company.

It is the Union's contention that the 65 "working days" means 65 days, in total, during which the employee is, however, briefly, at work. The Company's contention is that "working days" refers to days on which "a day's work" is performed, and that "a day's work" is defined in Article 12.1 of the collective agreement. That article is as follows:

> "12.1 Excluding employees assigned to Train Messenger Service, 8 consecutive hours exclusive of meal period constitute a day's work."

Since, in the Company's view, a "working day" refers, with the exception noted in Article 12.1, to a set number of hours, the real effect of Article 6.2.4 is to require of most employees that they accumulate 65 times the eight hours there referred to, as working hours. That is, seniority is, in practical terms, achieved when an employee has been at work for a total of 520 hours.

This is not an unreasonable interpretation of the meaning of the words "completion of 65 working days of cumulative service". "Working days" are not calendar days, and indeed it would be possible in some cases for employees to put in more than one "working day" in the course of a calendar day. Employees might, on this interpretation, become "permanently employed" within a period of less than 65 days from the date of hiring. Others, working less than eight hours per day, might not become "permanently employed"for some longer time, even where they had done some work on more than 65 days.

If the expression "working days" is to be interpreted in the light of Article 12.1, as being the performance of eight hours' work, then the Company's position is correct. I was not referred to any other provision in the collective agreement which would indicate any other meaning for the expression "working days". If, notwithstanding that,

the expression "working days" is amgiguous, then the very long-standing practice of the Company, in treating it as a period (or periods) of work totalling eight hours would be decisive.

Article 12.01, of course, refers to eight "consecutive" hours (exclusive of a meal period) as constituting a day's work. If this definition were to be applied rigorously employees who work for periods of less than eight consecutive hours might never become permanent employees. Even apart from this consideration, it would be my view that the reference to "working days" in Article 6.2.4 is meant to distinguish those days which are to count towards the achievement of seniority from "calendar days". They may not necessarily be days on which "a day's work" is performed; they must, however, be days on which some work is performed. It would, however, be contrary to the obvious purpose of a "probationary period", and quite unfair as between individual employees to treat equally those who work for an hour or so on any day, and those who perform "a day's work" on such a day. The accumulation of the equivalent of 65 "days' work" is, as I have suggested, a fair and reasonable interpretation of the requirement. It is one which is even-handed as between employees, and which gives the Company a reasonable opportunity to evaluate the employees and assess their qualifications for permanent employment.

In my view, and on the basis of the material before me, the expression "65 working days of accumulated service" has been defined, by long practice, as the completion of 520 hours of work for the Company. Accordingly, the Union's claim must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR