CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 782

Heard at Montreal, Wednesday, October 15,1980

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

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

DISPUTE:

Claim that Mrs. Motkaluk's name should not appear on the Seniority List of the Chief Accountant, Prairie Region because she has not held a permanent, full-time position.

JOINT STATEMENT OF ISSUE:

Mrs. Motkaluk was first employed as an unassigned Keypunch Operator on September 4, 1979 and at no time has she established herself on a permanent full-time position.
The Union claims that Mrs. Motkaluk is a casual employee and as such does not carry any seniority under Article 21 of the Collective Agreement and would only become eligible to do so under Article 21.5 if and when she establishes herself on a full-time permanent position.

The Company denied the claim.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD.) R. WELCH	(SGD.) G. A. KELLY
SYSTEM GENERAL CHAIRMAN	ASST. DIRECTOR OF ACCOUNTING

There appeared on behalf of the Company:

G. M. Booth	-	Personnel Manager,Finance & Accounting, CP Rail, Mtl.
C. A. Pompizzi	-	Administrative Asst. to Manager, Disbursements Accounting, CP Rail, Mtl.
D. Cardi	-	Labour Relations Officer, CP Rail, Mtl.

And on behalf of the Brotherhood:

R. Welch	-	System General Chairman, BRAC, Vancouver
D. Herbatuk	-	Vice General Chairman, BRAC, Montreal

AWARD OF THE ARBITRATOR

Mrs. Motkaluk was hired by the Company for a position covered by the collective agreement on September 4, 1979. She worked thereafter as an unassigned employee, that is, she worked on an irregular or "casual" basis.

Article 1 of the collective agreement defines "assigned" and "unassigned" employees. Unassigned employees are those who report for duty only as required or notified due to work being irregular. It is in that sense that they may be referred to as "casuals". The collective agreement does not exclude such persons from the bargaining unit.

Article 21.5 of the collective agreement provides as follows:

> "A new employee shall not be regarded as permanently employed until he has completed 65 days' cumulative compensated service and, if retained, shall then rank on the seniority list from the date first employed in a position covered by this agreement. In the meantime, unless removed for cause which in the opinion of the Company renders him undesirable for its service, the employee shall be regarded as coming within the terms of the agreement. Students who are employed between school terms shall not accumulate seniority."

This provision applies to employees generally, and would apply to unassigned as well as assigned employees. The reference to "cumulative" service would appear to make the provision quite apt for such employees. Of course, where such an employee acquires seniority, he or she may, in some cases, have what might be thought to be an unfair advantage over some other, "junior" employee who, by reason of having an assigned position, may have accumulated more actual working experience. The parties have expressly dealt with one such situation, that of students employed between school terms. They have not, however, excluded unassigned employees generally from the benefits of Article 21.5.

In placing Mrs. Motkaluk on the seniority list in accordance with Article 21.5, the Company acted pursuant to the requirements of the collective agreement. It may be noted that in Case No. 746 (involving a different, although similar, collective agreement provision) the Union took a position contrary to that asserted in the instant case. In any event, of course, the question here is simply whether or not the collective agreement provides for the acquisition of seniority rights by an employee in these circumstances.

It was argued for the Union that Article 25.2 of the collective agreement requires employees to exercise their seniority to assigned position in order to protect their seniority rights. Article 25.2, however, does not have such a broad effect. Rather, it requires employees whose positions are abolished or who are displaced to exercise seniority with respect to permanent positions. Employees who do not displace juniors in that way are not deprived of their seniority rights, they are simply limited in their exercise of them in certain ways. Article 25.2 certainly does not provide that employees in unassigned positions are to have no seniority rights.

In the instant case, the Company acted in accordance with the provisions of the collective agreement in placing Mrs. Motkaluk's name on the seniority list. There has been no violation of the collective agreement, and the grievance is therefore dismissed.

J. F. W. WEATHERILL
ARBITRATOR