CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 814

Heard at Montreal, Tuesday, March 10, 1981

Concerning

CANADIAN PACIFIC EXPRESS LIMITED

and

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

DISPUTE:

Ten employees at Lachine Terminal not being given proper notice of layoff.

EMPLOYEES' STATEMENT OF ISSUE:

May 20th, 1980, employees J.P. Bergeron, D. Gendreau, D. Lapointe, D. Lemieux, H. Laviolette, P. Seguin, C. Bertrand, P. Gallant, P. Lefebvre, and D. Mark were notified not to report to work on that day.

The Union claims these employees should have received a proper notice as per the Agreement, and requested reimbursement for lost wages.

The Company denied the claim.

FOR THE EMPLOYEES:

(SGD.) J.J. BOYCE
GENERAL CHAIRMAN

There appeared on behalf of the Company:

D. Cardi	-- Labour Relations Officer, CP Rail, Montreal
B.D. Neill	-- Manager, Labour Relations, CP Express, Toronto
R.A. Colquhoun	-- Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

J.J. Boyce	-- General Chairman, BRAC, Toronto
J. Crabb	-- Vice-General Chairman, BRAC, Toronto
F.W. McNeely	-- General Secretary-Treasurer, BRAC, Toronto

AWARD OF THE ARBITRATOR

The Union alleges that the Company did not give the grievors the

notice to which it is said they were entitled pursuant to Article 7.3.8 of the Collective Agreement. That Article is as follows:

> "Regularly assigned employees who are to be laid off and are unable to hold work on their local seniority roster shall be provided 48 hours' advance notice of such layoff. Unassigned employees shall be given as much advance notice as possible."

The Company, in its submission, dealt with the matter as though a violation of Article 7.3.7(1) had been alleged. That Article is as follows:

> "Not less than four working day's advance notice shall be given to regularly assigned employees when the positions they are holding are not required by the Company (abolished), except in the event of a strike or a work stoppage by employees in the railway industry, in which case a shorter notice may be given. An employee rendered redundant by the exercise of seniority by another employee will be considered as having been notified in advance by the four-day notice."

It is not necessary for the purposes of this case to determine whether or not a layoff or the non-requirement (abolition) of a position was involved, and the parties did not address themselves to that point. Under either of the above Articles, it would appear that "regularly assigned employees" are entitled to a certain amount of notice if they are not to work. Here, the grievors did not receive 48 hours' advance notice nor, of course, four days' notice. The first question to be determined, under either Article, is whether or not the grievors were "regularly assigned employees".

The grievors had, in the past, held bulletined positions and had at such time no doubt been "regularly assigned" employees. Some time prior to the grievance, however, the grievors' positions had been abolished, due to a decrease in traffic. Since then the grievors had worked as "unassigned" employees (that is, not holding bulletined positions), although they did in fact work regularly, five days per week, for at least five hours per day. They were not (as were yet another group of employees), called in on a daily basis.

While the grievors worked "regularly" in the sense described, they did not have regular assignments in the sense of bulletined positions. For the reasons set out in Case No. 458 (which involves a Collective Agreement essentially similar, in this respect, to the one involved here), it is my view that the grievors were not "regularly assigned employees" within the meaning of Article 7.3.7(1) or Article 7.3.8. They were not, therefore, entitled to 48 hours' (nor to four days') notice that they would not be required to work on May 20, 1980.

That is not, however, necessarily the end of the matter. The last sentence of Article 7.3.8 provides that "Unassigned employees shall be given as much advance notice as possible". Here, the Company of course knew well in advance that May 20, 1980 was to be an election day, the day of the Quebec Referendum. It was, as well, a day following a holiday. In order to comply with the requirements of The Elections Act with respect to providing employees with time to vote,

the Company - as it certainly knew in advance it would have to do - advised its express drivers to return to the terminal at 3:00 p.m. on May 20th. The grievors were among those who would normally report at 5:00 p.m. It is said that early in the morning of May 20th, the local management became aware that there would not be sufficient traffic to necessitate the normal complement of unassigned staff (including the grievors who, it will be remembered, were expected to report without being called) to supplement the afternoon shift. The grievors were, therefore, called in the morning of the day in question and told not to report for work. The issue is whether or not they were given "as much advance notice as possible" in the circumstances.

In my view, they were not. The grievors were, on a week-to week basis, entitled to expect to report to work at 5:00 p.m., Monday to Friday. There were other unassigned employees entitled to be called in on a daily basis. The grievors could have been put on such a basis of attendance had the Company deemed it appropriate. The likely unusual nature of the work load on the day in question must have been known to the Company well in advance, and it could have prepared for the situation (and met its needs: there were other employees on a daily-call basis who were not called in), by advising the grievors not to report unless called. The thrust of Article 7.3.8 is, among other things, to impose what is in effect an obligation of advance planning on the Company with respect to its man-power needs, and the sharing of this information, to the extent appropriate, with its employees. In the particular circumstances of this case, I think that obligation was not met, and that the Company did not give the grievors "as much advance notice as possible".

For the foregoing reasons, the grievance is allowed. It is my award that the grievors be compensated for their loss of earnings (five hours' regular wages) on the day in question.

J.F.W. Weatherill,
Arbitrator.