

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 849

Heard at Montreal, Tuesday, July 14, 1981

Concerning

CANADIAN PACIFIC EXPRESS COMPANY

and

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

DISPUTE:

Bay

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The curtailment of the Tormon Operation at the Thunder Terminal without the required three month notice as required by the Job Security Agreement.

EMPLOYEES' STATEMENT OF ISSUE:

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January 13th, 1981, a notice was served on the Brotherhood by Canadian Pacific Express Limited, advising that effective March 1st, 1981, the handling of Tormon Operation at Thunder Bay would be performed by an unnamed contractor.

The Brotherhood requested a three month notice as required under the Job Security Agreement.

The Company denied the request.

FOR THE EMPLOYEES:

(SGD.) J.J. BOYCE  
GENERAL CHAIRMAN

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

R.A. Colquhoun -- Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

F.W. McNeely -- General Secretary-Treasurer, BRAC, Toronto

G. Moore -- Vice-General Chairman, Moose Jaw, BRAC  
AWARD OF THE ARBITRATOR

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The "Tormon Operation" referred to in the Brotherhood's Statement of Issue is the delivery work carried on by CP Express for a number of shippers, members of the Canadian Retail Shippers Association, and carrying on a collective shipping operation under the name of Tormon. From the point of view of CP Express, Tormon is simply another customer, albeit a major one. Tormon, it would appear, makes local arrangements with express companies, such as CP Express or its competitors, for delivery of its traffic.

On January 13, 1981, in response to a new rate schedule proposed by CP Express, Tormon advised that effective March 1, 1981, all its Thunder Bay traffic would be handled by another distributor. There is no suggestion that CP Express had sought to bring an end to this business. There had been no formal contract with Tormon, and there was no notice requirement with respect to the discontinuance of that business. Tormon continues to use the services of CP Express at other locations.

The loss of the Tormon business at Thunder Bay meant a very substantial drop in the volume of traffic handled there. As a result, some 8 to 10 employees would be affected by layoff. This involved more than half of the work force at Thunder Bay. The change was not, however, necessarily a permanent one, since it might be that the Tormon business would be regained by the Company, or that it would attract the business of other shippers. While there could be some question as to whether or not this was an "operation change within the meaning of Article 8.1 of the Job Security Agreement (earlier CROA cases would suggest that it was), I shall deal with this case on the assumption that the reduction in the work force necessitated by the loss of the Tormon business did constitute an operational change, in a general way.

The question remains whether or not this was a change "brought about by fluctuation of traffic", within the meaning of Article 8.7 of the Job Security Agreement (I leave aside the other qualifications set out in that Article, which are not material to this case). In my view a change in volume of traffic attributable to the decision of a customer to take its business elsewhere must in general, be described as a "fluctuation of traffic". It was not a matter within the control of the Company except in the general sense in which it endeavours to gain rather than lose business. In this case, it lost business. This was, I think, the sort of situation to which the proviso in Article 8.7 applies, so that the notice requirement of Article 8 did not apply.

For the foregoing reasons, the grievance is dismissed.

J.F.W. Weatherill,  
Arbitrator.