

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 920

Heard at Montreal, Tuesday, March 9, 1982

Concerning

CANADIAN PACIFIC TRANSPORT COMPANY LIMITED

(WESTERN DIVISION)

and

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

EX PARTE

DISPUTE:

Mr. R. J. Wall commenced service with the Company on September 8th, 1960, and would have been on his twenty-second (22nd) anniversary year after September 8th, 1981.

BROTHERHOOD STATEMENT OF ISSUE:

The Union claim that Mr. Wall is entitled to five (5) weeks annual vacation after September 8th, 1981, as per Article 21.4 and Note (3) effective January 1, 1981, as per the Collective Agreement.

The Company declined the claim.

FOR THE BROTHERHOOD:

(SGD.) PAUL ROUILLARD
FOR R. WELCH
SYSTEM GENERAL CHAIRMAN

There appeared on behalf of the Company:

N. W. Fosbery - Director Labour Relations, CP Transport,
Willowdale

And on behalf of the Brotherhood:

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

AWARD OF THE ARBITRATOR

There is no dispute as to the issue in this matter, nor is there any dispute as to the one material fact, namely that the grievor entered the Company's service on September 8, 1960. It is unfortunate that no Joint Statement was forthcoming, as contemplated by Clause 5 of the Memorandum establishing the Canadian Railway Office of Arbitration. In this respect, what is said in Case No. 919 applies equally here.

Article 21.4 of the Collective Agreement, together with Note (3), which immediately follows, are as follows:

"21.4 Effective January 1, 1981: "Subject to the provisions of Note (3) below, an employee who, at the beginning of the calendar year, has maintained a continuous employment relationship for at least 21 years and has completed at least 5,250 days of cumulative compensated service shall have his vacation scheduled on the basis of one working day's vacation with pay for each 10 days of cumulative compensated service, or major portion thereof, during the preceding calendar year, with a maximum of 25 working days; in subsequent years, he will continue vacation entitlement on the foregoing basis until qualifying for additional vacation under Clause 21.5.

"NOTE (3): An employee covered by Clause 21.4 will be entitled to vacation on the basis outlined therein if on his twenty-second or subsequent service anniversary date he achieves 5,500 days of cumulative compensated service; otherwise his vacation entitlement will be calculated as set out in Clause 21.3. Any vacation granted for which the employee does not subsequently qualify will be deducted from the employee's vacation entitlement in the next calendar year. If such employee leaves the service for any reason prior to his next vacation, the adjustment will be made at time of leaving."

The grievor was hired during the calendar year 1960. In the instant case, the grievor's claim relates to annual vacation for the year 1981. At the beginning of that calendar year, the grievor had "maintained a continuous employment relationship" for something over twenty years, but something less than twenty-one years. He had not maintained such a relationship "for at least 21 years", as required by Article 21.4. Note (3) does not alter the situation, and has no application to the grievor's case, since (a) he was not "an employee covered by Clause 21.4", and (b) he had not yet reached his twenty-second or subsequent service anniversary date. The fact that Article 21.4 refers to the length of the "continuous employment relationship" as at "the beginning of the calendar year" whereas note (3) refers to the "service anniversary date" creates no ambiguity. The two dates are of course (in most cases) different. The "service anniversary date" is to be referred to in certain special cases, coming generally within the scope of Article 21.4. There is no difficulty in applying these provisions to particular claims, and no need to resort to extrinsic evidence to interpret the provisions in question. The grievor did not come within either Article 21.4 or Note (3) thereto. The grievance must therefore be dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.