

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1103

Heard at Montreal, Tuesday, June 14, 1983

Concerning

TORONTO, HAMILTON & BUFFALO RAILWAY CO.

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

On September 20, 1982, the Grievor, Mr. L. Mitchell's position of Welder was abolished by the Company.

JOINT STATEMENT OF ISSUE:

The Union contends that the Grievor's position was abolished as a result of an operational change and the Grievor should, therefore, be paid an incumbency rate pursuant to Clause 8.9 of the Supplemental Job Security Agreement dated March 2, 1979.

The Company declines the Union's contention.

FOR THE BROTHERHOOD:

(SGD.) STANLEY J. LAS
General Chairman

FOR THE COMPANY:

(SGD.) P. A. PENDER
FOR: J. A. Hill,
Manager

There appeared on behalf of the Company:

H. B. Butterworth - Asst. Supervisor Labour Relations, CPR,
Toronto
I. N. Wigle - Chief Engineer, TH&B Ry. Hamilton
R. A. Colquhoun - Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

Stanley J. Las - General Chairman, BMWE, Smithville
F. L. Stoppler - Vice-President, BMWE, Ottawa

AWARD OF THE ARBITRATOR

Under Article 8.9 of the Job Security Agreement, an incumbency rate is payable where an employee is displaced (with resulting wage reduction of \$2.00 or more per week), due to a technological, operational or organizational change. By Article 8.7, the terms operational and organizational change "shall not include normal reassignment of duties arising out of the nature of the work in which the employees are engaged nor to changes brought about by fluctuation

of traffic or normal seasonal staff adjustments".

The grievor's position of Welder was abolished, and as a result his rate of pay reduced so that he would be entitled to the incumbency rate if his reduction is attributable to a technological, operational or organizational change.

Prior to the abolition of the grievor's position and the reduction of his rate, there was a change in the nature of the work assigned to Welders, in that switch points were no longer welded, but were replaced. This change, however, involved only yard and back track switches, it already being the practice to replace main track switches. Further, welding of switch points constituted only a portion of actual welding time, and a quite small portion of employees total working time. Most significant for this case, however, is that the abolishment of the grievor's position came some time after the change from welding certain switch points to replacing them. On the material before me it is clear that the real reason for the abolishment of the position was not that earlier change in work (which would have only a minor effect on the work of the Welders), but rather on the substantial decline in the volume of business, and the number of carloads handled during the preceding year. As a result of this decline, there was a reduced need for Welders' work, and it was for that reason, I find, that the position was abolished. The abolition of the position in question was a change brought about by fluctuation in traffic. Thus, Article 8 does not apply, and the grievor was not entitled to an incumbency rate.

For the foregoing reasons, the grievance is dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.