CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1612

Heard at Montreal, Thursday, January 15, 1987

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Eastern Region)

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
BOARD OF ADJUSTMENT #14

DISPUTE:

Claim that the Company violated Article 7,21.1, 22.1 and 25.2 of the Collective Agreement, by refusing to allow Mrs. T. Marleau to displace a junior employee.

JOINT STATEMENT OF ISSUE:

On December 31st, 1985, the position of "Concierge- Baggagiste" at Montreal West/Westmount Stations held by Mrs. T. Marleau, was abolished by the Company.

Mrs. T. Marleau was not permitted to displace Mrs. C. Millette, an employee with less seniority, on the same seniority roster in accordance with Article 25.2 of the Collective Agreement.

"It is the Company's position that Mrs. C. Millette is the incumbent of a non-scheduled position of 'Concierge Itinerant' and therefore Mrs. T. Marleau has no displacement rights to this position".

The Union contends the position of "Concierge-Baggagiste" at Dorion/Beaconsfield Stations is within the scope of the Collective Agreement.

The Company denied the claim.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) D. J. BUJOLD	(SGD.) G. A. SWANSON
General Chairman	General Manager
Board of Adjustment #14	Operation & Maintenance

There appeared on behalf of the Company:

M. K. Couse	- Asst. Supervisor, Labour Relations, CPR, Toronto
P. E. Timpson	- Labour Relations Officer, CPR, Montreal
P. Macarone	- Materials Department, CPR, Montreal

And on behalf of the Brotherhood:

D. J. Bujold, - General Chairman, BRAC, Montreal
J. Germain - Vice-General Chairman, BRAC, Montreal
D. Toupin - Local Chairman, Local No. 73, l'RAC, Montreal
Mme T. Marleau - Grievor

AWARD OF THE ARBITRATOR

It is not disputed that since 1945, the position which the grievor now claims through bumping rights has been treated by the Company as excluded from the bargaining unit. That is the position of "Travelling Janitor" now held by Mrs. Millette since 1980, and between 1945 and 1980 by Mr. Dicaire. The job involves cleaning duties at the Company's stations in Vaudreuil (Dorion), Valois, Beaconsfield and Dorval, and is similar, if not identical, to the job performed by the grievor at the Company's station at Montreal West and Westmount before her layoff. It is also clear, however, that the language of the Certification Order of the Canada Labour Relations Board issued to the Union in 1965, and the terms of Article 22 of the Collective Agreement include on their face, the position in question as part of the bargaining unit.

The Union asserts that it did not know, for over 20 years, that the job was being performed by a non union member for whom dues were never deducted, and that it is only through this grievance that it became aware of the situation. As true as that may be, it does appear that the Union had other bargaining unit members at work in the stations in question. Bearing in mind that it is the Union's obligation to be vigilant of its bargaining rights. The Arbitrator must find that in these circumstances the Union reasonably should have known, at least since 1965, that its rights under the agreement were being violated. Its apparent acceptance of the Company's practice of treating the position as excluded from the bargaining unit could reasonably be interpreted by the Company as a representation on the part of the Union that it would not enforce its strict rights. In consequence of these circumstances, I must agree that there has been a representation relied on by the Company and that the doctrine of estoppel applies to the claim to the extent that it is made under the Collective Agreement which expired December 31, 1986.

It is well settled, however, that an estoppel does not continue in perpetuity. When a party, having the benefit of estoppel is put on notice that the other party seeks to revert to its strict rights under the Collective Agreement, the estoppel must be deemed to end, at a minimum, at the conclusion of the Collective Agreement then in effect. The parties are then in a position to deal with the matter in bargaining, and thereafter no unfairness can be said to operate. In the instant case, therefore, the interpretation advanced by the Union, which the Arbitrator finds to be correct, may well be successfully asserted under a succeeding Collective Agreement, absent any material change in the language governing the scope of the bargaining unit. However, in respect of the agreement in effect at the time Mrs. Marleau first sought to exercise her bumping rights, the Union is estopped from asserting her claim to the job held by

Mrs. Millette, or for any related compensation. Subject to these observations, and without prejudice to the grievor's rights under any subsequent Collective Agreement, the grievance must be dismissed.

MICHEL G. PICHER,
ARBITRATOR.