CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1736

Heard at Montreal, Tuesday 12 January 1988

Concerning

CANADIAN PACIFIC LIMITED

And

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

DISPUTE:

The propriety of the abolishment of position `Train Machine Clerk 3' effective March 15, 1987.

JOINT STATEMENT OF ISSUE:

The Company issued a bulletin on March 12, 1987, advising the position of train Machine Clerk 3 would be abolished, effective March 15, 1987.

Mr. Kevin Brown commenced vacation March 3, 1987 and did not become aware his position was abolished, until March 16, 1987, the day he was to return for duty.

The Union contends, the Company violated Articles 25.6 and 25.7 of the Collective Agreement.

The Company contends the 4 day notice of job abolishment was proper according to the directives in Article 25.6 and 25.7.

FOR THE COMPANY:	FOR THE BROTHERHOOD:
(SGD) J.A. LINN	(SGD) J. MANCHIP
General Manager for: D. J. Bujold	General Chairman
Operation & Maintenance East	Board of Adjustment No. 14

There appeared on behalf of the Company:

M.K. Couse	Assistant Supervisor Labour Relations, Toronto
P.E. Timpson	Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

J. Manchip	Vice-General Chairman, GST, Toronto
J.H. Germain	General Chairman, Montreal
G.B. Gonzales	Local, Chairman, Toronto
C. Pinard	Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

The grievance alleges a violation of Article 25.6 of the Collective Agreement which provides as follows:

> 25.6 Not less than four working days' advance notice shall be given to regularly assigned employees when the positions they are holding are not required by the Company, except in the event of a strike or work stoppage by employees in the railway industry, in which case a shorter notice may be given. As much advance notice as possible shall be given to unassigned employees. Notice of all staff reductions will be furnished to the appropriate Local Chairman concurrent with such notice being issued to employees.

The grievor, Mr. K.W. Brown, was on annual vacation when his position was abolished. While the Company attempted to contact him on a number of occasions by telephone to let him know that his position was abolished effective March 15, 1987, it did not reach him until March 16th, the day he was scheduled to return to duty. He then exercised his seniority rights to secure another position which, according to the Union, caused him to lose a day's work. The Union maintains that the Company was obligated to give the grievor actual notice of not less than four working days in advance of abolishment of his job, and seeks a declaration to that effect as well as an order for the compensation of the grievor for one day's lost wages and benefits.

The Collective Agreement specifically addresses the circumstance of an employee's layoff being communicated to him or her during a leave of absence, including a vacation. Article 25.7 is as follows:

> 25.7 Advance notice under Clause 25.6 may be served at any time, such as when an employee is on vacation, on leave of absence, absent account illness as well as when an employee is working at his position.

Article 25.2 further provides that an employee who is absent on leave when his or her position is abolished may exercise seniority within ten calendar days of the expiry of the leave.

The purpose of the notice provision in Article 25.6 is relatively clear. The sooner an employee is aware of his or her impending layoff, the sooner he or she may effectively use accrued seniority rights to secure another bargaining unit position. Any delay in that process can mean a loss of gainful working time to the employee. Accordingly, Article 25.2 gives the employee who is at work at the time of the abolishment of his or her job five calendar days to

notify the Company of the job he or she chooses to bump into, with a further five days in which to move into the chosen position.

In the Arbitrator's view the fundamental purpose of Article 25.6 is to provide protection to the employee. On the other hand, the Company is disadvantaged if it cannot effectively give notice of layoff to an employee who is on a leave of absence. Its interest is, therefore, protected by Article 25.7, which expressly contemplates that notice under Article 25.6 may be served when an employee is on vacation. In the Arbitrator's view, however, the protection so afforded to the Company should not be construed as abrogating the right of the employee to a minumum of four working days' advance notice of his or her layoff, as provided in Article 25.6 of the Collective Agreement. It should not be presumed that the parties intended that an employee on a leave of absence, whether for vacation, illness or any other reason, should be at a disadvantage as compared with other employees with respect to the receipt of notice of a layoff and the consequent exercise of seniority rights.

The Company asserts that the posting of the notice of layoff at the work place, as did occur in the instant case, is in any event sufficient compliance with the requirements of Article 25.6. With that interpretation I cannot agree. Firstly, the language of Article 25.6 is, on its face, mandatory, as reflected both in the use of the word "shall" and the overall imperative tone of the provision which precisely delineates the notice period. Secondly, the notice in question must, on the language of the pertinent provisions, be construed as personal to the employee, and not a general notice to all employees or their bargaining agent. In this regard it is significant that reference to the collateral notification of the Union's local chairman is separately described, while the more general provision contemplates notice being given directly to employees. In the Arbitrator's view it is also significant that Article 25.7 refers to notice being "served" at any time. The normal meaning of service is a direct personal communication, whether verbally or in writing. Service is normally established as a condition precedent to the specific event that is the subject of the notice being served. While the law or private agreements can make provision for deemed service, as for example where communication by registered mail or regular pre-posted mail is specifically stated to constitute the service of notice for the purposes of a statute or of a collective agreement, such a provision must be specifically articulated, and cannot normally be implied. There is no such provision within the instant Collective Agreement.

On a plain reading of the language of the agreement, Article 25.7 gives the Company the ability to serve notice on an employee at any time in respect of his or her impending layoff. That is subject, of course, to the overriding four day notice period appearing in Article 25.6. While Article 25.7 qualifies 25.6, it does not modify or amend the mandatory notice period provided therein. That is understandable, since it is the Company, and not the employee, that is in the better position to make appropriate advance arrangements in respect of notification of an impending layoff. Given the mandatory language of Article 25.6 and the limited qualifications of Article 25.7, where the Company fails to make adequate plans in advance for the communication of an impending lay off, or even when it finds

itself unable to give such notification for reasons beyond its control, the right of the employee to no less than four days' actual notice continues without limitation. While the deliberate attempt of an employee to frustrate the Company's efforts at notification might give rise to an exception, there is no suggestion of such conduct in the instant case.

For the foregoing reasons the grievance must be allowed. The Arbitrator finds and declares that the grievor, Mr. Kevin Brown, was denied advance notice of the abolishment of his job pursuant to the Company bulletin of March 12, 1987, contrary to Article 25.6 of the Collective Agreement. He shall, therefore, be compensated forthwith for one day's wages and benefits lost. I retain jurisdiction in the event of any dispute between the parties in respect of the interpretation or implementation of this award.

(SGD) MICHEL G. PICHER
ARBITRATOR