CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1793

Heard at Montreal, Wednesday, June 15, 1988

Concerning

CANADIAN PARCEL DELIVERY
(CP EXPRESS AND TRANSPORT)

And

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Claim for all wages lost to employees of Lodge 2346 working for CanPar, Toronto, Ontario, due to layoff notice issued on December 19, 1986.

JOINT STATEMENT OF ISSUE:

On December 19, 1986, the Company issued a notice to the employees advising they were laid off effective December 22, 1986.

The Union contends the notice issued by the Company is exactly the same notice the Company submitted to the Union as part of their demands to incorporate this notice into the Collective Agreement.

The Union has repeatedly rejected this notice at the bargaining table.

The Union's position concerning the layoff effective December 22, 1986, is that it did not take effect as the employees worked that date and before they can be laid off again, another notice must be issued in accordance with Article 5.3.6.

The Union contends the Company repeatedly violated Articles 5.3.6, 5.3.8 and 8.1 of the Collective Agreement and requested payment as per the dispute.

The Company declined the Union's request.

FOR THE UNION:

(Sgd) J. J. BOYCE
General Chairman
System Board of Adjustment 517

FOR THE COMPANY:

(Sgd) B. D. NEILL
Director, Labour Relations

There appeared on behalf of the Company:

D. Bennett - Labour Relations Officer, Toronto

D. Weinert - Labour Relations Officer, CPET
Toronto

And on behalf of the Union:

J. J. Boyce - General Chairman, Toronto
J. Crabb - Secretary/Treasurer, Toronto

AWARD OF THE ARBITRATOR

This is a policy grievance based on the same facts as gave rise to the grievance in C.R.O.A. 1792. For the reasons related in that award the Arbitrator has concluded that what transpired was both a layoff, in so far as employees were given advance notice of days on which there would be no work available to them, and a reduction in the hours of permanent positions which would, in the circumstances disclosed, have required the rebulletining of the positions in question. While the Union has requested a cease and desist order and an affirmative direction on the part of the Arbitrator for the Company to comply with the Collective Agreement in the future, I am satisfied that the findings and implicit directions in the award in C.R.O.A. 1792 will be sufficient to protect the Union's interest in the future.

The Union also requests compensation for all of the employees, arguing that in the circumstances they should not have suffered a reduction of working hours. As noted in C.R.O.A. 1792, if the Company had correctly availed itself of its right to reduce hours for the permanent positions, at best employees would have had the opportunity to bid on those positions on the basis of seniority. In these proceedings the onus is upon the Union to establish, on the balance of probabilities, that employees suffered a loss of wages as a result of the Company's failure to follow that course. It is not clear to this Arbitrator that if the Company had honoured its obligation to rebulletin the positions in question any or all of the employees would have been in a better position with respect to their earnings. Absent evidence to establish that fact, the Arbitrator can make no award as to compensation.

I therefore declare that the Company has violated the Collective Agreement within the terms described in C.R.O.A. 1792, and retain jurisdiction in the event of any dispute between the parties respecting the interpretation or implementation of this award.

June 16, 1988 (SGD) MICHEL G. PICHER
ARBITRATOR