CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1818

Heard at Montreal, Thursday, 14 July 1988

Concerning

CP EXPRESS & TRANSPORT

And

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

Concerning the improper staff lay-off in the province of British Columbia in line with the Collective Agreement' specifically Articles 7.3 and 7.4 - Reduction in Staff.

UNION'S STATEMENT OF ISSUE:

The Union contends that the language contained in Article 7.4 is quite clear and specific when dealing with staff lay-offs. The Company is constrained to specific duties and responsibilities and further, must carry out these procedures to the letter of the agreement.

The Company maintains that their action was in line with the Collective Agreement and that there would not be payment to the employees affected.

The Union feels that their position should succeed in line with the Collective Agreement and that all British Columbia CPET employees be compensated for time lost.

FOR THE BROTHERHOOD:

(SGD) V. W. FLYNN
for: General Chairman
System Board of Adjustment No. 517

There appeared on behalf of the Company:

B. Weinert - Manager, Labour Relations, Toronto
B. D. Neill - Director, Labour Relations, Toronto

And on behalf of the Union:

J. J. Boyce - General Chairman, Toronto
M. Gauthier - General Chairman, Montreal

AWARD OF THE ARBITRATOR

The Company seeks to rely on the prior decisions of this Office in C.R.O.A. 191 and 409. Neither decision, nor the Collective Agreement provisions there being considered are instructive in the instant case.

The facts are relatively straight forward. On short notice the Company became aware of a province-wide one-day protest strike to be held on June 1, 1987 by the British Columbia Federation of Labour to protest certain amendments to the labour code of that province. It is common ground that the strike did not involve the railways and that the Union's members did not participate in it. On Friday, May 29, 1987 the Company posted a layoff notice advising employees that they would be laid off for one day commencing the evening of Sunday, May 31, through Monday, June 1, 1987.

The Company seeks to characterize what occurred as a "suspension" of the jobs at the terminals affected. In the Arbitrator's view whether what transpired is characterized as a suspension, a reduction in the hours of the jobs or their abolishment is of little practical consequence for the purposes of this grievance. It appears to the Arbitrator that in any event the circumstances would be caught by the language of Article 7.3.7 of the Collective Agreement which is as follows:

> 7.3.7 (1) Not less that four working days' advance notice shall be given to regularly assigned employees when the positions they are holding are not required by the Company (abolished), except in the event of a strike or a work stoppage by employees in the railway industry, in which case a shorter notice may be given. An employee rendered redundant by the exercise of seniority by another employee will be considered as having been notified in advance by the four-day notice.
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> (2) When necessary to reduce the hours of duty of a regularly assigned full-time position, such reduction in hours shall be considered as the abolishment of that position and Clause 7.3.7(1) applies.

Article 7.3 of the Collective Agreement addresses the subject of reductions in staff. As the Arbitrator has been directed to no language relating to the suspension of positions for any particular period of time, it would appear that in the instant case, for the pay period in question, the employees affected suffered a reduction in hours within the meaning of Article 7.3.7(2). By the operation of that provision, their positions must be deemed abolished. As is clear from the general terms of Article 7.3, and in particular 7.3.1 an employee whose position is abolished is entitled to not less than

four working days' advance notice, except in the specific case of a strike or work stoppage in the railway industry, and is further entitled to exercise his or her seniority to displace a junior employee within the local seniority group for whose position he or she is qualified.

It is clear that what transpired on June 1, 1987 was not a strike or work stoppage within the railway industry as contemplated in Article 7.3.7(1). In the circumstances the Arbitrator must therefore sustain the position of the Union and allow the grievance. I therefore declare that the Company has violated the agreement by failing to give the requisite notice to the employees concerned, and by failing to allow them to exercise their seniority rights in the circumstances. The employees affected shall be compensated for all wages and benefits lost on May 31 and June 1, 1987.

On the assumption that the instant award will clarify the parties' mutual rights and obligations, I do not deem it necessary to further issue a direction to the Company to observe the terms of the Collective Agreement in the future, as requested by the Union. I do, however, remain seized in this matter in the event of any further dispute between the parties respecting the interpretation or implementation of this Award.

July 15, 1988 (SGD) MICHEL G. PICHER
ARBITRATOR