CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1885

Heard at Montreal, Wednesday, 15 February 1989

Concerning

CANADIAN PACIFIC LIMITED

And

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

That the intent of Article 24.3 is being misinterpreted by the Company and that employees are bieng forced off their assigned positions at the insistence of the Company.

UNION'S STATEMENT OF ISSUE:

The Union contends that employees are being transferred to positions other than assigned by bid or "of vacancies they desire."

The Company contends that Article 24.3 clearly recognizes that the Company may assign employees to temporary vacancies or permanent (vacancies) assignments.

The Union contends this practice should cease.

FOR THE UNION:

(SGD) D. DEVEAU
General Chairman

There appeared on behalf of the Company:

L. J. Guenther	- Assistant Supervisor Labour Relations Vancouver
D. A. Lypka	- Labour Relations Officer, Vancouver
P. E. Timpson	- Labour Relations Officer, Montreal

And on behalf of the Union:

D. Deveau	- General Chairman, Calgary
J. Robertson	- Vice-General Chairman, Nelson

AWARD OF THE ARBITRATOR

The Union maintains that the Company is without authority to force employees who occupy assigned positions to fill temporary vacancies. It submits that the Company has misapplied the terms of Article 24.3

which is as follows:

> 24.3 Employees temporarily or permanently assigned to higher-rated positions shall receive the higher rates while occupying such positions, including excluded or excepted positions; employees temporarily assigned to lower-rated positions shall not have their rates reduced.

In the Arbitrator's view the foregoing provision does not, on its face or by implication, indicate whether the Company may require assigned employees to fill temporary vacancies, contrary to their own preference. The agreement, moreover, contains no specific provision with respect to the rights of employees in the filling of vacancies of less than fourteen calendar days.

The Union seeks to rely, in part, on the terms of Article 24.5 which is as follows:

> 24.5 Employees declining promotion shall not lose their seniority.

The foregoing provision must be read in the context in which it appears. Read together with Article 24.3, it can be viewed as contemplating the employer canvassing a number of employees with respect to their interest in filling a temporary assignment to a higher-rated position assuming, without finding conclusively, that such a move would constitute a promotion. If an employee indicates that he or she does not wish to fill the position, causing the Company to canvass the next persons in line, the individual does not jeopardize his or her seniority standing. Moreover, while the Arbitrator makes no finding in this regard, the provision may also be instructive in the case of an employee who declines an offer of promotion to a position outside the bargaining unit.

In the Arbitrator's view Article 23 is pertinent for what it reveals of the intention of the parties with respect to the options given to employees in respect of assignments. It provides, in part, as follows:

> 23.1 Except as otherwise provided in Article 5 and Clause 23.4, new positions or vacancies shall be promptly bulletined for a period of ten calendar days in the seniority group where they occur.
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> ...
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> 23.5 Pending appointment, the senior qualified employee at the particular work location concerned, desiring the vacancy, shall be appointed to the position.
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> 23.6 Vacancies of known duration of fourteen calendar days or more, other than annual vacation, shall be bulletined.
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> Where the Company requires annual vacation relief vacancies to be filled, individually or in combination, preference shall be given to the senior qualified employee at the particular work location concerned desiring such relief work.

In the Arbitrator's view the purpose of the foregoing provisions is to indicate that, in the case of a temporary vacancy, the senior qualified employee who wishes to occupy that position has a right to do so. These provisions do not, however, in any way limit the prerogative of the Company to temporarily assign an employee to fill the vacancy when there is no willing volunteer.

The assignment of employees is, generally speaking, a right of management. As with any right, it may be circumscribed by the terms of a collective agreement. Where it is asserted, however, that the Company has forfeited its right to make temporary assignments, clear and unequivocal collective agreement language must be required. The instant Collective Agreement contains no provision of that kind. While it appears that local arrangements have been made with respect to the method of filling temporary assignments, such arrangements vary from place to place, and cannot be taken as having qualified or amended the general terms of the Collective Agreement.

For the foregoing reasons the grievance must be dismissed.

February 17, 1989 (Sgd.) MICHEL G. PICHER
ARBITRATOR