CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2301
Heard at Montreal Wednesday, 11 November 1992
concerning
CANADIAN PACIFIC EXPRESS & TRANSPORT
and
TRANSPORTATION COMMUNICATIONS UNION
EX PARTE
DISPUTE:
A matter involving the entitlement of an Incumbent Rate of Pay, under Job Security Agreement provisions to linehaul employee, V. Godler of Port Coquitlam.
UNION'S STATEMENT OF ISSUE:
The Union, during the grievance procedure, raised the cogent argument that its position should logically succeed given that the Company issued an Article 5 Notice on February 8th, 1991, specifically including employee V. Godler which stated, "the applicable provisions of the Job Security Agreement will apply to all eligible employees affected by this change."
The Union contends it is clear and evident that the Company did issue said JSA Notice, that employee, Godler was so named in said Notice, and that the last Memorandum of Agreement provided a one-time cash settlement predicated on 30 percent of the actual dollar value of each employee's incumbency at the time.
To date, the Company has declined the Union's request, therefore, the Union is respectfully requesting that the grievor be properly compensated in line with the formula utilized for all other affected linehaul employees.
FOR THE UNION:
(SGD.) M. W. FLYNN
for: EXECUTIVE VICE-PRESIDENT
There appeared on behalf of the Company:
P. A. Young
Counsel, Toronto
B. F. Weinert
Director, Labour Relations, Toronto
J. H. Barrett
Regional Manager, Western Canada Linehaul, Vancouver
And on behalf of the Union:
H. Caley
Counsel, Toronto
V. Godler
Grievor

AWARD OF THE ARBITRATOR

The claim advanced by the Union rests on the provisions of article 5.8 of the Job Security agreement which provides, in part, as follows:

QQINDENT5.8 QQINDENTAn employee whose pay is reduced by $2.00 or more per week, by reason of being displaced due to a technological, operational or organizational change will continue to be paid at the basic weekly or hourly rate applicable to the position permanently held at the time of the change providing that, in the exercise of seniority, he

QQINDENTa) QQINDENTfirst accepts the highest rated position at his location to which his seniority and qualifications entitle him; or

QQINDENTb) QQINDENT...

The material before the Arbitrator discloses that the grievor was not at work when the job which he held as a linehaul driver was abolished effective May 8, 1992. The grievor was then on leave as a result of injuries sustained at work, and for which he was in receipt of Workers' Compensation benefits. It is common ground that the injury which he sustained disqualified him from continuing to perform the functions of a highway linehaul driver, because of permanent medical restrictions. When he returned to work in April of 1992 he was assigned to pick up and delivery work.

In the circumstances the Arbitrator must conclude that the position of the Company is correct. The grievor's entitlement to maintenance of basic rates under article 5.8 of the Job Security agreement depends on a number of conditions precedent. Foremost among them is the displacement of the employee "... due to a technological, operational or organizational change ...". In the Arbitrator's view it cannot be said that the grievor was adversely impacted by the abolishment of the linehaul position, as he was no longer active in that position, nor physically qualified to return to it, at the time of the notice of February 8, 1991. He cannot, accordingly, be described as having been displaced by reason of the change which was the subject of that notice. In the result, he cannot claim an entitlement to a maintenance of basic rates.

For these reasons the grievance must be dismissed.

November 13, 1992

(Sgd.) MICHEL G. PICHER

ARBITRATOR