

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2312

Heard at Montreal, Tuesday, 12 January 1993

concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

The lay-off of the Galt Subdivision Extra Gang, London Division, on completion of their tour of duty on January 17, 1991.

JOINT STATEMENT OF ISSUE:

Bulletin No. 16, dated March 12, 1990, advertised for positions on an Extra Gang to originate at Woodstock and work on the Galt Subdivision and Woodstock Branches. The gang was to commence on or about April 9, 1990, and continue to on or about September 30, 1990, and due to additional work being available, the gang was not laid off in 1990. However, the gang was laid off on January 17, 1991. The Union contends that the Company violated Sections 40.1, 40.2, 40.4 and 40.5 of Wage Agreement No. 41, and could not lay off any of the employees on the Extra Gang, since these lay-offs were not part of the planned changes involving the displacement or lay-off of employees and were not included in the Semi-Annual Report for the first half of 1991.

The Union requests that the employees laid off the Division Extra Gang be compensated for any lost wages and expenses they incurred as a result of this lay-off and that they be returned to their positions on the Extra Gang forthwith

The Union further requests that any other employee affected by this lay-off, due to their being displaced, laid off or having to exercise their seniority to another position, be compensated for any lost wages and expenses they incurred, and that they also be returned to their former positions immediately.

The Company denies the Union's contention and declines the Unions requests.

FOR THE BROTHERHOOD:

FOR THE COMPANY:

(SGD.) L. M. DiMASSIMO

(SGD.) M. G. MUDIE

SYSTEM FEDERATION GENERAL CHAIRMAN

GENERAL MANAGER, OPERATION & MAINTENANCE, IFS

There appeared on behalf of the Company:

R. J. Martel

Labour Relations Officer, IFS, Toronto

D. T. Cooke

Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

J. J. Kruk

System Federation General Chairman, Ottawa

D. McCracken

Federation General Chairman, Toronto

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the Galt Subdivision Extra Gang was identified in the Company's Semi-Annual Plan for the second half of 1990 as scheduled to be laid off on or about October 15, 1990. The employees were not in fact laid off on that date, as unforeseen work requirements involving some crossing replacements and the installation of an interchange with CN Rail delayed the effective date of their layoff. It is not disputed that the employees in question were so advised by the roadmaster. While it was anticipated that the work would, in any event, be completed by late 1990, delays over the period of the Christmas and New Year's holidays caused the work to extend to January 17, 1991, at which time the gang was laid off.

The Brotherhood pleads a violation of section 40 of the collective agreement which provides, in part, as follows:

QQINDENT40.1 QQINDENTEffective January 1 and July 1 each year the Company will provide a written report to each Union setting out in specific detail any plans that it has that involve displacement or lay-off of any employee represented by that Union or otherwise involve a permanent decrease in the work force. The report will be provided to the General Chairman of each union within 15 days of the commencement of the period. The first six month report will be produced July 1, 1988.

QQINDENT40.2 QQINDENTThe report will identify which changes will be of a technological, operational or organizational nature and which changes are expected to be made because of a permanent decrease in traffic, a normal reassignment of duties arising out of the nature of the work, or normal seasonal staff adjustments. Additionally, the report shall state the number of employees who are likely to be affected, their geographical location, when the changes will occur and the plans to preserve their employment including training or placement into vacant permanent positions.

QQINDENT40.3 QQINDENTThe Company will meet with the General Chairman within 30 days of the receipt of the report to discuss it and its implications for the work force. The purpose of the meetings is to convey and discuss information related to planned changes and not to negotiate the actual changes or restrict the entitlement of the Company to make changes to rationalize its work force or to displace or lay off employees consistent with collective agreement provisions.

QQINDENT40.4 QQINDENTNo employee may be laid off or displaced as a result of a planned change of the nature contemplated in 40.2 unless and until the employer has substantially complied with the above provisions and a planned change has been included in a report. From a technical standpoint, the Arbitrator cannot reject the position of the Brotherhood. It cannot be denied that the employees in question were laid off during the period which related to the semi-annual plan for the first half of 1991. The issue becomes whether there has been a violation of the provision which warrants the remedy of reinstatement and compensation sought by the Brotherhood.

While it is true that the layoff of the Galt Subdivision Extra Gang was not described in the first semi-annual plan for 1991, it had clearly been contained in the previous plan for the latter part of 1990. Because of certain unforeseen developments the layoff was not, in fact, implemented until some two and one-half weeks into the new year. In the circumstances the Company argues that there has been "substantial compliance" with the provisions of section 40 of the collective agreement. I am satisfied that there has.

The purpose of the section is to give employees and their union reasonable advance notice of an impending layoff, affording the greatest possible opportunity to mitigate its adverse impacts. In the case at hand, the spirit of that requirement was plainly met by placing the employees on notice, as early as July 1990, that their assignment was temporary and that they could expect it to end at or about mid-October of that year. On what basis can it be concluded that they have suffered prejudice because the layoff was in fact delayed, for reasons fully disclosed to them, because the work assignment extended several weeks longer than originally expected? In the Arbitrator's view to grant the remedy sought would ignore the fundamental purpose of section 40 of the collective agreement which, in the circumstances, was substantially served. The employees affected by the layoff in January of 1991 were fully aware that they would be laid off, and that their layoff had been delayed only temporarily because of the extra work available. The Brotherhood's case might be more compelling if the employees had reason to believe that they had, in effect, been transferred to permanent or semi-permanent positions, and that the original intention to lay them off had been categorically rescinded. However, that is not what the evidence discloses.

For the foregoing reasons, while the Arbitrator is prepared to find and declare that strict compliance with the requirements of section 40 would have required the Company to include the January layoff of the employees in question in the semi-annual plan for the first half of 1991, and that failing such mention in the report, there should have been specific consultation with the General Chairman, I must find that there has, nevertheless, been substantial compliance with the requirements of the section as contemplated within section 40.4. For these reasons, although the grievance is allowed, in part, to the extent of a declaration that the agreement was violated, no further remedy shall be ordered.

January 15, 1993

(Sgd.) MICHEL G. PICHER
ARBITRATOR