

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2726

Heard in Calgary, Tuesday, 14 May 1996

concerning

CANADIAN PACIFIC LIMITED

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[UNITED TRANSPORTATION UNION]**

DISPUTE:

The wording contained in Bulletin No. 417 dated December 11, 1992.

JOINT STATEMENT OF ISSUE:

On December 11, 1992, the Company issued Bulletin No. 417 at Red Deer which read:

Applications will be accepted at the office of the Rail Terminal Supervisor Red Deer, until 12:00 December 20, 1992 for the following position, account Trainman KJ Plaisant gave his 10 day notice.

One Trainman

Works Red Deer Switcher service Sunday thru Thursday Friday and Saturday if required.

Starting Time 1700

Home Terminal Red Deer

The Council objects to the words "as required", alleging that they violate article 42(a) of the collective agreement.

The Company has declined the Council's request.

FOR THE COUNCIL:

(SGD.) L. O. SCHILLACI

GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) R. E. WILSON

FOR: DISTRICT GENERAL MANAGER, PRAIRIE DISTRICT

There appeared on behalf of the Company:

L. J. Guenther	– Labour Relations Officer, Calgary
R. E. Wilson	– Manager, Labour Relations, Calgary
S. Seeney	– Labour Relations Officer, Calgary
J. Copping	– Labour Relations Research Officer, Calgary

And on behalf of the Council:

D. Finnson	– Secretary/Treasurer, Saskatoon
K. Jeffries	– Vice-General Chairman, Cranbrook
B. McLafferty	– Sr. Vice-General Chairman, Moose Jaw
S. Keene	– Vice-General Chairman, London

AWARD OF THE ARBITRATOR

The evidence before the Arbitrator establishes that the bulletin which is the subject of this dispute is consistent with bulletins which the Company has issued for a number of years, without objection or grievance. In the circumstances, I am satisfied that the Union's acquiescence in the Company's practice can be said to now reflect the parties' mutual understanding that it is appropriate, in some cases, for the Company to use words such as "if required" in a bulletin, particularly in relation to one or two days of an assignment which it is anticipated may not always be necessary. It would, of course, be abusive for the Company to purport to bulletin an entire assignment on an "as required" basis as a means of attempting to avoid its obligations under article 42 or the consequences of article 25(c) which provides for the payment of penalties if assignments are cancelled without sufficient advance notice. That, however, is not what is disclosed in the instant case. The grievance must therefore be dismissed.

May 17, 1996

(signed) MICHEL G. PICHER
ARBITRATOR