

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 111

Heard at Montreal, Tuesday, June 11th, 1968

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

DISPUTE:

Claim on behalf of employees as a result of the application of the provisions of Circular No. 277, dated October 5, 1966, signed by D.I. McNeill, Vice-President of Personnel. The working conditions of these employees are governed by the following Memorandums of Understanding:

ACCOUNTING DEPARTMENT

Computer Centre November 6, 1967

ACCOUNTING DEPARTMENT

Auditor of Disbursements

Auditor of Ancillary Operations

Auditor of Claims

Freight Claim Agents October 12, 1967

OFFICES OF SUPERINTENDENT OPERATING February 1, 1967

BUILDING OF SUPERINTENDENT

– Windsor Station, Montreal March 14, 1967

OFFICE OF GENERAL PAYMASTER March 14, 1967

S.D. AND P.C. AND NEWS SERVICE DEPARTMENT March 14, 1967

MANAGER OF STORES March 30, 1967

PASSENGER TRAFFIC DEPARTMENT March 30, 1967

FREIGHT TRAFFIC DEPARTMENT March 30, 1967

PURCHASING DEPARTMENT March 30, 1967

OFFICE OF CHIEF OF TRANSPORTATION AND

CAR ACCOUNTANT April 18, 1967

OFFICE OF CHIEF OF MOTIVE POWER AND

ROLLING STOCK April 27, 1967

PIGGYBACK SERVICES October 12, 1967

JOINT STATEMENT OF ISSUE:

From the effective dates of the Memoranda of Understanding, as listed in the dispute, rates of pay of employees working in these Departments continued to be subject to the application of the provisions of Circular No 277 dated October 5, 1966, effective October 1, 1966, issued by the Personnel Department to Heads of Departments.

It is contended by the employee representatives that the wages of the employees, as referred hereto, should have been governed by the provisions of the following rule which is identical in each Agreement referred to in the Memorandums of Understanding, as listed in the dispute.

RULE – RATES OF PAY

- (a) Effective 1st June, 1951 rates of pay shall be established as provided in schedule attached (other than those changed subsequently by mutual agreement between the Company and this Brotherhood) as amended by the terms of the “Master Agreements” effective February 7, 1953; May 16, 1956; November 26, 1958 and May 11, 1961.
- (b) The following graduated rates shall apply for occupants of clerical positions with less clerical experience than that required to qualify for the schedule rate of positions:-
 - Clerks with less than six (6) months’ experience \$30.00 per month less than scheduled rate.
 - Clerks with over six (6) months’ and less than one
 - (1) year’s experience \$20.00 per month less than schedule rate.
 - Clerks with over one (1) year’s and less than eighteen
 - (18) months’ experience \$10.00 per month less than schedule rate.
 - After 18 months’ experience schedule rate to apply.
- (c) Employees commencing their service in junior positions (junior clerks office boys, etc.) shall be governed by the following graduated rates:
 - First six (6) months’ service \$10.00 less than schedule rate.
 - Over six (6) months’ and less than
 - one (1) year’s service \$5.00 less than schedule rate.
 - After one (1) year’s service schedule rate to apply.
- (d) Employees in junior positions where in the course of their duties gain clerical experience shall be credited with fifty per cent (50%) of their service in their respective capacities towards their cumulative clerical experience in the application of graduated rates specified in Clause (b) of this Rule.

This claim is denied by the Company on the basis of the clause covering wage rates and application of step rates which appears in each Memorandum of Understanding as Clauses 3 1, 4.1 or 5.1, as the case may be. A typical example of these clauses is as follows:

Until this Memorandum is superseded by a collective agreement covering employees in classifications to which this Memorandum applies, said employees will be paid at their wage rates in effect on the date of signing, subject to whatever general wage increases may be applied to clerical employees at the said office of Regional Accountant, Merchandise Services, Winnipeg, and subject also to the application of step rates currently in effect.

FOR THE EMPLOYEES:

(Sgd.) M. PELOQUIN
GENERAL CHAIRMAN

FOR THE COMPANY:

(Sgd.) J. C. ANDERSON
ASSISTANT TO VICE-PRESIDENT – PERSONNEL

There appeared on behalf of the Company:

J. C. Anderson – Assistant to Vice President – Personnel, Montreal
 J. A. McGuire – Assistant Manager Labour Relations, Montreal

And on behalf of the Brotherhood:

M. Peloquin – General Chairman, Montreal
 L. J. Pateman – Assistant General Chairman, Winnipeg
 E. F. Downard – International. President's Special Assistant, Montreal
 D. Herbatuk – Assistant General Chairman, Montreal

AWARD OF THE ARBITRATOR

The background information supplied the Arbitrator showed that the employees involved in this claim were non-scheduled employees on October 1, 1966, when with the issuance of Company Circular 277 on that date the progression of step rates for such employees became:

Starting Rate (no experience)	– \$100 less than position rate
After 6 months' experience	– \$75 less than position rate
After 12 months' experience	– \$50 less than position rate
After 18 months' experience	– \$25 less than position rate
After 24 months' experience	– position rate

Following application by this Brotherhood to represent these employees in collective bargaining, negotiations commenced. It was discovered that the two thousand odd employees about to be covered by collective agreement had their wage rates over the years determined more or less unilaterally by individual heads. The result of this was said to be that the position rates established in different departments did not reflect a proper comparative rate structure between departments whereby equal rates were paid for equivalent duties and responsibilities. Because of this, it was agreed between the parties it was not feasible at that time to prepare one comprehensive collective agreement which would cover all of these employees and it was therefore agreed that wage rates would be frozen for two reasons:

First, the kind of a job study that would be necessary to establish a proper wage structure would take many months to complete; and second, by the Master Agreement of March 14, 1967, to which the Company and the Brotherhood were signatories, it was agreed that a job study of all positions represented by the Brotherhood through the entire system would be undertaken. This job study is, in fact, presently in progress jointly with the Brotherhood.

It was stated that as the parties had agreed that existing wage rates would be frozen, it was necessary in drafting the Memorandum of Understanding to keep the provisions applicable to wage rates separate and apart from those applicable to working conditions.

A separate provision dealing with wages was included in each Memorandum and this paragraph reads:

Until this Memorandum is superseded by a collective agreement covering employees in a classification to which this Memorandum applies, said employees will be paid at their wage rates in effect on the date of signing subject to whatever general wage increases may be applied to clerical employees at the said office of Regional Accountant, Merchandise Services, Winnipeg, and subject also to the application of step rates currently in effect.

For the Brotherhood it was claimed that the words "step rates currently in effect" refer to the step rates contained in the office of the Regional Accountant, Merchandise Services, Winnipeg, Agreement, which provide that:

Clerks with less than six (6) months' experience	\$30.00 per month less than scheduled rate.
Clerks with over six (6) months' and	
less than one (1) year's experience	\$20.00 per month less than schedule rate.
Clerks with over one (1) year's and	

less than eighteen (18) months' experience \$10.00 per month less than schedule rate.

The principal submission for the Brotherhood was that because the Company agreed on January 5, 1967, to delete references to step rates in Sections 6, 7 and 8 from proposals issued by the Company on November 16, 1966, that set forth the \$100. to \$25. steps outlined above, this was intended to convey that the step rates of from \$30.00 to \$10.00 as prevailed in the office of the Regional Accountant, Merchandise Services, Winnipeg, should apply.

On the other hand it was submitted for the Company that the step rates associated with the words "currently in effect" meant those step rates which had actually been in effect for the employees concerned for some considerable time previously, as per Circular 277. It was stated that step rates are an inseparable part of wage rates, so that if the Union contention were correct, the paragraph in the Memoranda dealing with wages would be contradictory to the agreement to freeze wage rates.

It was claimed for the Company that if the \$30-20-10 step rates were applied rather than the \$100-75-50-25, which had already been in effect for these newly certified employees, many of them would have been entitled to wage increases immediately the Memoranda of Understanding had been signed. This, it was said, would be entirely contradictory to the intent of the parties that wages would be frozen, which intention was said to be clearly spelled out in the wage rate provision by the words "... said employees will be paid at their Wage rates in effect on the date of signing ..."

It is basic in interpretation of a contract that the language used must govern, not the understanding carried by either party prior to its execution in writing. This was held in a matter concerning **United Electrical Workers and Canadian Locomotive Company**, 14 LAC 105:

Even if the statements in question did in fact represent the union's understanding of an agreement which had been arrived at between the parties at the time, such agreement would have been wiped out by the collective agreement subsequently entered into, unless that contract expressly reserved collateral or outside agreements which might exist between the parties, which was obviously not the case.

The task of this Arbitrator then is to examine the provision of the agreement quoted to ascertain the intent of the parties as they finally reduce it to writing.

The first part of the provision,

Until this Memorandum is superseded by a collective agreement covering the employees in a classification to which the Memorandum applies, said employees will be paid at their wage rates in effect on the date of signing subject to whatever general wage increases may be applied to clerical employees at the said office of Regional Accountant, Merchandise Services, Winnipeg ...

clearly indicates the intent of the parties that until that Memorandum was superseded, these employees were to receive no more than they were then earning. The following words

... and subject also to the application of step rates currently in effect.

could not reasonably be interpreted so as to bring about a pattern of pay that would nullify the effect of the first part of that paragraph. In other words, the expression "and subject also to the application of step rates currently in effect" is part and parcel of the intent to freeze those involved at their then existing levels of compensation.

For these reasons this application is denied.

(signed) J. A. HANRAHAN
ARBITRATOR