CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 177

Heard at Montreal, Tuesday, October 14th, 1969

Concerning

CANADIAN PACIFIC LIMITED

and

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

DISPUTE:

Brotherhood claim violation of Rule 1 (Scope) in that work normally performed by scheduled employee (Clerk-Stenographer), reassigned and now performed by non-scheduled employee (Confidential Stenographer).

JOINT STATEMENT OF ISSUE:

Bulletin, File 18-20, dated September 23rd, 1968, issued by the Company over the signature of Mr. W.L. Greenway, Superintendent, SD&PC Department – "Due to the decline in business, Management has decided to reduce expenses and abolish the position of Clerk-Stenographer which you now hold. The effective date for this change will be October 1, 1968."

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) R. WELCH	(SGD.) THOS. P. JAMES
GENERAL CHAIRMAN	MANAGER, PASSENGER SERVICES

There appeared on behalf of the Company:

D. Cardi	– Labour Relations Assistant, Montreal
J. W. Moffatt	– General Superintendent, Passenger Operations, Montreal

And on behalf of the Brotherhood:

R. Welch	– General Chairman, Vancouver
F. Mazur	– Vice-General Chairman, Port Arthur,
W. C. Y. McGregor	– International Vice-President, Montreal

AWARD OF THE ARBITRATOR

The abolition of the position of Clerk-Stenographer (or at least the determination not to have anyone working in that classification), could not in itself be a matter of complaint. It is for the company to determine what work it requires to be performed. The determination, as a result of a decline in business, to "abolish the position of Clerk-Stenographer", was made in the course of management of the company. There had been a Clerk-Stenographer in the Superintendent's office in Winnipeg. For business reason the company decided that it no longer needed a Clerk-Stenographer in that office. It is not suggested that this was anything other than a *bona fide* decision, and the decision is therefore not reviewable in arbitration proceedings.

At the time the position was abolished, the Clerk-Stenographer was performing about two hours' work per day. After the position was abolished that work was assigned to the Superintendent's Secretary, a position in the same office but outside the bargaining unit. The result of this is that certain tasks formerly performed by a member of the bargaining unit are now performed by an employee in a position outside the bargaining unit.

It may be observed that this is not a case of contracting-out. The work in question is still being performed by an employee of the company. Of course, the effect of this assignment, from the union's point of view, is the same as if the work had been contracted-out. It has been held in many arbitration cases that in the absence of an express provision in the collective agreement, there is nothing to prevent a company from contracting out work formerly performed by its own employees. See **Case No. 138** and **Case No. 151**.

In the collective agreement before me, there is no express prohibition of contracting-out, and what is more important for this case, there no express prohibition against the assignment to persons outside the bargaining unit, of work formerly performed by members of the bargaining unit. In these circumstances, the question which really arises is whether the person performing the work is, by reason of the sort of work performed, in fact a member of the bargaining unit, regardless of his ostensible Job classification. The principles which apply in these cases are set out, with a review of the cases, in the **Fittings Ltd. case**, 10 L.A.C. 294, in which His Honour Judge Little was chairman. The cases are further discussed in a more recent **Fittings Ltd. case** (September 4, 1969, not yet reported), in which the undersigned was chairman.

In the instant case, it was not alleged that the Superintendent's Secretary had become, by virtue of the work assigned to her, a member of the bargaining unit. No doubt, by virtue of some at least of the tasks assigned to her, she remained properly classified as Superintendent's Secretary, and there is nothing before me to support the conclusion that any of the tasks she performed were of a sort not appropriate to her classification, although of course some of them would also have been appropriate for a Clerk-Stenographer.

For the foregoing reasons I am unable to conclude that there has been any violation of the collective agreement, and the grievance must accordingly be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR