

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 286

Heard at Montreal, Tuesday, May 11th, 1971

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

The Brotherhood claims the Company violated Article VIII of the January 29, 1969 Job Security Agreement when it abolished the positions Highway Drivers (Mail Service) without three months' notice.

JOINT STATEMENT OF ISSUE:

On December 9, 1970, Notice that Highway Drivers (Mail Service J. Cox et al would have their positions abolished effective December 31, 1970.

The Brotherhood claimed it was an operational change and subject to Article VIII protection. The Company denied that this was an operational change as contemplated in Article VIII and took the position there had been no violation of the Agreement.

The Brotherhood requested the reinstatement of the Drivers in their former positions.

The Company denied the Brotherhood's request.

FOR THE EMPLOYEES:

(SGD.) E. E. THOMS
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) K. L. CRUMP
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

L. V. Collard	– System Labour Relations Officer, Montreal
P. A. McDiarmid	– System Labour Relations Officer, Montreal
G. James	– Labour Relations Assistant, Moncton
H. Peet	– Employee Relations Supervisor, St. John's
J. Nicholson	– Superintendent Express, St. John's

And on behalf of the Brotherhood.

E. E. Thoms	– General Chairman, Freshwater, P.B.
M. J. Walsh	– Local Chairman, St. John's
G. D. Noseworthy	– Local Chairman, Argenticia

AWARD OF THE ARBITRATOR

The material provisions of Article VIII of the Job Security Agreement are as follows..

1. The Company will not put into effect any technological, operational or organizational change of a permanent nature which will effect a material change in working conditions with adverse effects on employees without giving as much advance notice as possible to the General Chairman representing such employees or such other officer as may be named by the union concerned to receive such notices. In any event, not less than three months' notice shall be given if relocation of employees is involved, and two months, notice in other cases, with a full description thereof and with appropriate details as to the consequent changes in working conditions and the expected number of employees who would be adversely affected.

...

5. The terms Technological, Operational and Organizational change shall not include normal reassignment of duties out of the nature of the work in which the employees are engaged nor to changes brought about by fluctuation of traffic or normal seasonal staff adjustments.

The question which arises in this case is whether the cancellation of a number of Highway Drivers' positions constituted a "technological, operational or organizational change of a permanent nature" such as would call for the giving of notice to the union under Clause 1 of Article VIII. It is the company's contention that the reduction in the number of positions was a result of a fluctuation in traffic within the meaning of Article VIII (1).

The drivers occupying the positions in question worked on the transportation of mail pursuant to a contract between the company and the Canada Post Office. That contract had been for a term of two years, expiring on September 30, 1970. It was extended for a period of three months, to December 30, 1970. It was not renewed, and as a result the company could no longer utilize the services of the drivers in question.

Now the decision of any of the company's customers to use its services or not has an effect on the company's needs for employees to carry out its work. The flow of traffic reflects the totality of these decisions, and, to some extent, the general business conditions which partially govern them. Where, in this process, there are variations in the company's needs for staff, these variations are clearly due to fluctuations in traffic within the meaning of Article VIII (5). The abolition of positions in such circumstances is not a matter over which the company need give notice pursuant to Article VIII (1).

In applying the provisions of Article VIII, however, care must be taken against over-generalizing their application. Practically every operational change could no doubt be attributed to "fluctuations of traffic" so as to restrict the application of the Article to much less than its proper scope. "Fluctuations of traffic" are no doubt the long-run cause of much of the company's activity. Here, however, we are concerned with giving meaning to the phrase in the context of a provision for job security. It operates so as to restrict the circumstances in which the company is required to give notice, but not so as to destroy the overall effect of the provision. In **Case No. 272**, dealing with similar provisions, it was said that "fluctuations" included "general declines", although it would not necessarily be limited to those. In case **No. 271**, train messenger service was discontinued on certain trains because the principle reason for such service – the handling of currency shipments from the Bank of Canada – was removed when the Bank decided not to forward such shipments by rail. It was held there was an elimination of a type of service, not a "fluctuation in traffic" as that phrase was used in the agreement. There are differences in wording between the agreement in issue in **Case No. 271**, and that in the agreement before me, but the provisions are essentially similar, and it is my view that the phrases "fluctuations in traffic" and "fluctuation of traffic" are intended to have essentially the same meaning.

In the instant case there was a complete stop to the transportation of mail, and clearly an adverse effect on the employees concerned. The determination is to be made having regard to the circumstances of the particular case, and in the instant it is my view that this was a situation to which the provisions of Article VIII applied.

For the foregoing reasons the grievance is allowed.

(signed) J. F. W. WEATHERILL
ARBITRATOR