

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 380

Heard at Montreal, Wednesday, October 11, 1972

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**CANADIAN BROTHERHOOD OF RAILWAY,  
TRANSPORT AND GENERAL WORKERS**

### **DISPUTE:**

Claim that Articles 21.7 and 29 of Agreement 5.1 were violated.

### **JOINT STATEMENT OF ISSUE:**

On September 30, 1970 the Company notified the Brotherhood of its intention to implement a Grid Control System to dispatch its vehicle fleet. This involved positions of Assistant Vehicle Dispatcher being reclassified as Telephone Clerks effective December 1, 1970. Positions of Telephone Clerk were advertised to the employees on November 18, 1970. As a result of staff change vacancy notices were issued on June 10 and July 31, 1971 advertising vacancies in these positions. The qualifications shown on the vacancy notices for these positions included a working knowledge of both the French and English language. The Brotherhood contends that because of the bilingual qualification the rate of pay of the position is inappropriate.

### **FOR THE EMPLOYEES:**

**(SGD.) J. A. PELLETIER**  
NATIONAL VICE-PRESIDENT

### **FOR THE COMPANY:**

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

There appeared on behalf of the Company:

D. O. McGrath	– System Labour Relations Officer, Montreal
G. J. James	– Labour Relations Assistant, Montreal
G. A. Carra	– Regional Labour Relations Officer, Montreal
R. Metcalfe	– Fleet Controller, Montreal
M. Campbell	– General Supervisor, Montreal

And on behalf of the Brotherhood:

P. E. Jutras	– Regional Vice President, Montreal
J. Quinn	– Local Chairman, Montreal
G. Thivierge	– Representative, Montreal

### **AWARD OF THE ARBITRATOR**

The job of Telephone Clerk, which falls within the Classification of General Clerk was created, as the joint statement of issue sets out, effective December 1, 1970. Positions, showing as a qualification a working knowledge of French and English, were advertised on November 18, 1970. This followed notice to the Union on September 30, 1970, of the Company's intention to reclassify five positions of Assistant Vehicle Dispatcher to Telephone Clerks. The notice included advice as to the rate of the job.

The change thus instituted by the Company related to the implementation of a grid control system of dispatch of its vehicle fleet. Certain of the duties formerly performed by Assistant Vehicle Dispatchers were transferred to a higher-rated classification. The remaining duties, and no additional ones, constituted the new position of Telephone

Clerk. Assistant Vehicle Dispatchers (although not necessarily other classifications in the terminal in question), had for some time been required to be bilingual. This requirement was carried over to the new position of Telephone Clerk.

The notification to the Union on September 10, 1970, of the establishment of the new position was in compliance with Article 29 of the collective agreement. The material provisions of that article are as follows.

**Article 29 – Wage Rates for New Jobs**

- 29.1** When a bona fide new job or position is to be established which cannot be properly placed in an existing classification by mutual agreement, management will establish a classification and rate on a temporary basis.
- 29.2** Written notification of the temporary rate and classification will be furnished to the Regional Vice-President of the Brotherhood.
- 29.3** The new rate and classification shall be considered temporary for a period of sixty (60) calendar days following the date of notification to the Regional Vice-President of the Brotherhood. During this period (but not thereafter) the Regional Vice-President of the Brotherhood may request the Company to negotiate the rate for the classification. The negotiated rate, if higher than the temporary rate, shall be applied retroactively to the date of the establishment of the temporary classification and rate, except as otherwise mutually agreed. If no request has been made by the Brotherhood to negotiate the rate within the sixty (60) calendar day period, or if no grievance is filed within sixty (60) calendar days from the date of notification to the Regional Vice-President of the Brotherhood, or upon completion of negotiations, as the case may be, the temporary classification and rate shall become a part of the wage scale.

Pursuant to this article, the classification and rate for the job thus established became part of the wage scale sixty days after September 30, 1970. The material before me does not show any outstanding grievance relating to the notice. The notices of vacancy which were issued in June and July 1971 were notices for openings in the positions which had been established pursuant to the notice sent on September 30, 1970. By that time the classification and rate of the job had become a part of the wage scale, by virtue of Article 29.3. The relation of the classification and wage scale to the particular job could no longer properly be made the subject of a grievance. In this regard, the situation must be distinguished from that where it is alleged that certain work is improperly assigned and where a “continuing grievance” may be said to exist. Here, the collective agreement expressly requires that any grievance relating to the classification and wage rate of a new job be filed within the time provided.

Article 21.7, referred to in the joint statement, prohibits changes in agreed classifications or basic rates of pay for individual positions, except in certain circumstances. The effect of this is to protect classifications and wage rates once established. In this case, however, the question is one of the establishment of a classification and wage rate for a new job, and the matter is clearly governed by Article 29. Compliance with Article 29 does not affect the operation of Article 21.7. In the instant case, there has been no violation of either provision.

While the foregoing is sufficient for the disposition of the instant case, in view of the positions taken by the parties, some mention may be made of the substance of the dispute which involved the contention that a requirement of bilingualism represented a significant addition to the qualifications of the job. In **Case No. 257** it was held that to add to the qualifications for the job of Motorman a requirement of bilingualism was to add a requirement going beyond the bounds of the classification. In **Case No. 281** it was held that, while such a requirement of a Stenographer would seem to be a substantial additional requirement, the parties had in fact accepted bilingualism as a proper qualification for the job when the rates were negotiated. In the instant case, too, the requirement cannot be said to be a new one in any significant sense, since it had been a qualification for the job of Assistant Vehicle Dispatcher and related to those duties which were transferred to the new classification of Telephone Clerk. In the circumstances, then, it cannot be said that the Company has added this requirement to the job.

For all of the foregoing reasons, the grievance must be dismissed.

**(signed) J. F. W. WEATHERILL**  
**ARBITRATOR**