CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 383

Heard at Montreal, Tuesday, November 14th, 1972

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood claims that the Company violated a local understanding.

JOINT STATEMENT OF ISSUE:

When the Company established a stenographic pool in Saskatoon on May 31, 1971 a local officer of the Company agreed with an Accredited Representative of the Brotherhood that the five employees who would be assigned to the pool would retain their classifications and salaries while employed in the pool. The Company refused to honor this commitment on the basis that neither the local officer of the Company nor the Accredited Representative of the Brotherhood were authorized to establish agreements relating to rates of pay. The Brotherhood protested the Company's decision and has progressed the matter through the various steps of the grievance procedure.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. A. PELLETIER	(SGD.) K. L. CRUMP
NATIONAL VICE-PRESIDENT	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
E. Szpak	– Labour Relations Assistant, Montreal
E. W. Cullen	– Administrative Officer, Saskatchewan

And on behalf of the Brotherhood:

R. Henham	– Regional Vice-President, Vancouver

AWARD OF THE ARBITRATOR

On March 31, 1971 the Company's Area Administrative Officer wrote to an Accredited Representative of the Union advising of certain changes in office services facilities. This letter is said to constitute notice to the Union of the change in question pursuant to Article VIII of the job security agreement. The letter, which was written following a meeting on the matter between the Administrative Officer and the Union representative, also set out the changes which would take place in the assignments of the employees affected. In particular, the five employees who were to be transferred to the steno pool (the creation of which was the principal change involved) would retain their existing titles and salaries (as Stenographers or Clerk–Stenographers) until such time as they bid out of the pool.

Subsequently, when the matter was considered by higher Company officers, it was decided that the five positions in question should be reclassified as Transcription Typist, a classification carrying a lower rate of pay than that of Stenographer or that of Clerk–Stenographer. The incumbents would, however, retain their existing rates until the incumbency differential was erased by general wage award.

The question in this case is not one of the proper classifications of the work involved. The question is simply whether the Company is bound by what was set out in the Administrative Officer's letter of March 31, 1972. The Company takes the position that its subsequent letter, dated December 16, 1971, advising of the reclassification of the positions in question was itself a notice pursuant to Article VIII of the job security agreement. It may be doubted if a notice under Article VIII of the job security agreement is appropriate in such a case. The collective agreement itself contains precise provisions relating to questions of job classification. There had been no further changes than those which had led to the previous negotiations on the establishment of a steno pool. If indeed the letter of March 31, 1971 set out the mutual agreement of the parties contemplated by Article VIII of the Job security agreement, then the Company's subsequent letter could not have the effect of rescinding that agreement.

The letter of March 31, 1971 described the work to be done by the employees in the steno pool. From that description it would appear that the proper classification of the work (having regard to the Company's own statements in this case), would be that of Transcription Typists. Nevertheless the letter sets out the Company's understanding that the employees would retain their present titles and salaries (as Stenographers and Clerk–Stenographers) until such time as they bid out of the pool. The Company went beyond this, however, to state that "... it is our intention to retain the titles of Steno for all future pool members so that we may have a source from which to promote employees to positions such as Clerk Steno, Secretary, etc.". The arrangement thus appears to have been one deliberately entered into. For the Company now to contend that the jobs in question "should" have been reclassified is to ignore that the situation was one which was negotiated between the parties. In its brief in this matter, the Company submitted that "If uniformity was for some reason undesirable, then there should also have been negotiations between the parties and proper documentation to formalize the departure from the norm." As I have indicated, however, the Company's own letter reveals that the arrangements were made deliberately, and reasons, whatever their validity were set out for the classifications agreed to.

The Company argues that the change "should" have been subject to review by the "proper officer of the Company" and the Regional Vice-President of the Brotherhood, as contemplated by Article 21.7 of the collective agreement. It would seem that a "proper officer of the Company" in such a case would be a Regional General Manager or a Vice-President, or someone specifically designated to act for such officer. Thus, the letter of March 31, 1971 would not be binding on the Company, because the Administrative Officer was not the proper officer of the Company to make such an agreement. The difficulty with this argument is that the agreement whose effect the Company now seeks to avoid was made pursuant to Article VIII of the job security agreement. That agreement does not specify who may make agreements on behalf of the Company, and in my view the Union would be entitled to carry on negotiations with a Company officer who appeared to have an appropriate degree of responsibility. Such negotiations were carried out pursuant to Article VIII of the Job security agreement, and their results are set out in the letter of March 31, 1971.

Changes were then made, pursuant to that agreement, presumably on May 31, 1971 the effective date stated in the matter. The Company's subsequent letter of December 16, 1971 purporting to reclassify the positions in question appears, in the circumstances. to be a renunciation of an agreement previously made and acted on. In my view, the agreement set out in the letter of March 31, 1971, was an agreement made pursuant to the Job security agreement and was binding on the parties. There appears to be no authority for its unilateral abrogation.

For the foregoing reasons, the grievance must be allowed. It should be said that this conclusion is reached having regard to the circumstances of the particular case only.

(signed) J. F. W. WEATHERILL
ARBITRATOR