

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 423

Heard at Montreal, Wednesday, October 10th, 1973

Concerning

CANADIAN PACIFIC LIMITED

and

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

EX PARTE

### DISPUTE:

Claim by the Union that the Company violated Article 8 of the Job Security Agreement: Technological, Operational, Organizational Changes, when it did not supply the required notice.

### EMPLOYEES' STATEMENT OF ISSUE:

Due to the abolishment of Terminal Passenger Supervisor, a position excluded from the terms of the agreement, the position of Relief Depot Supervisor Cashier and Head Checker, incumbent Mr. C.L. Masters, was abolished (job description attached), with subsequent displacement.

The Union contend that the change adversely effected Van Straten, Gowdrige and Newsome, employees covered by the collective agreement. Van Straten and Gowdrige incumbency rates Section 9 of Article 8, Newsome two months' notice of lay-off.

The Company contend the change does not come within the scope of Article 8.

### FOR THE EMPLOYEES:

(SGD.) R. WELCH

GENERAL CHAIRMAN

There appeared on behalf of the Company:

E. G. Abbot – Assistant Manager Labour Relations, Montreal

P. E. Timpson – Assistant Supervisor Labour Relations, Vancouver

And on behalf of the Brotherhood:

R. Welch – General Chairman, Vancouver

T. J. Cairns – Vice-General Chairman, Secretary/Treasurer, Montreal

### AWARD OF THE ARBITRATOR

The position of Terminal Passenger Supervisor at the Vancouver Baggage Room was abolished effective November 25, 1972. While this was a non-scheduled position, and its abolition could not in itself be a ground of complaint under this collective agreement, it was accompanied by the abolition of a position which did come within the unit, namely, relieving Terminal Passenger Supervisor. The incumbent of this position exercised his seniority, displacing the Cashier, Baggage Room, and the incumbent of the latter position exercised his seniority to become Cashier, Ticket

Office. When this occurred, some three persons then working in the ticket office were affected, and reverted to other jobs. The Union alleges that in the circumstances there was an organizational change of a permanent nature which called for the application of Article VIII of the Job Security agreement.

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 have 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.
2. The terms Operational and Organizational change shall not include normal reassignment of duties arising 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 Company stated that there was an organizational change at Vancouver on January 1, 1973, when the Ticket Office and the Dining Car/Linen Storeroom offices ceased to report to the Superintendent, Vancouver Division and became the responsibility of the Superintendent, Passenger Services. This change, however, does not account for the change in question here, namely, the abolition of position of Relieving Terminal Passenger Supervisor. The employee concerned worked thereafter as Cashier, Baggage Room and the relief work which he had performed ceased to be available or (in the case of certain other relief work he had performed) was absorbed into the work of existing classifications.

It was the Company's view that, if the change in question be considered an organizational change, it was not a change of the sort contemplated by Article VIII, because it was brought about by fluctuation of traffic, and thus not to be considered, by virtue of Article VIII (7), set out above. It is clear from the material before me that passenger traffic being handled by "The Canadian" at Vancouver has significantly declined in recent years, and the volume of such traffic would relate to the Company's staffing requirements in this area.

The Company referred particularly to **CROA Case No. 228**, where it was held that the cancellation of two trains was simply a reduction in the level of operations due to fluctuation of traffic. A number of cases have been decided since that time which might make the application of Case No. 228 questionable. **Cases 288** and **331** also involved the cancellation of trains, and there the grievances were allowed. While "fluctuations" include general declines in traffic or business (**Case No. 272**), practically every operational change could be attributed to "fluctuations of traffic" (**Case No. 286**), and care must be taken not to apply subsection (7) of Article VIII in such a way as to destroy the overall effect of the article.

In some of the cases in which Article VIII (or an analogous provision in the case of other agreements) has been held to apply, a distinction has been drawn between a reduction in level of operations (in which case the article might not apply), and the elimination of a type of service (and in such cases the article has been held to apply: (**Cases No. 286** and **271**)). In the instant case, it is clear that the change which occurred must be described as of the former type. The same service is performed, but on a reduced scale, and without the same supervision.

Of the previous cases, those most closely analogous are **Cases 3** and **284**. Of course the circumstances of those cases were different, but essentially they involved reductions in staff due to insufficient work load, and the distribution of the existing work among a smaller group of employees. In the instant case the abolition of the position of Relieving Terminal Passenger Supervisor was caused by fluctuation of traffic, and resulted in what must be described as a normal reassignment of duties.

For the foregoing reasons, it is my view that this was not a situation to which the provisions of Article VIII applied. Accordingly, the grievance is dismissed.

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

**ARBITRATOR**