CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 454

Heard at Montreal , Tuesday, July 9th, 1974

Concerning

CANADIAN PACIFIC TRANSPORT COMPANY LIMITED

and

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

EX PARTE

DISPUTE:

The Union contends that the Company violated Article 12 of the collective agreement when it did not negotiate in accordance with Article 12 upon the establishment of the positions of Claims Representatives under the supervision of Area Claims Managers at various locations.

EMPLOYEES' STATEMENT OF ISSUE:

By letter of January 28th, 1974, the Company advised of planned changes in the handling and processing of cargo claims, the change resulting in the abolishment of fifteen scheduled positions.

Correspondence was exchanged regarding the insufficient information on the reorganization of the claims departments.

On February 15th, 1974, the Company advised of the reorganized structure.

FOR THE EMPLOYEES:

(SGD.) R. WELCH

GENERAL CHAIRMAN

There appeared on behalf of the Company:

C. C. Baker – Director, Labour Relations & Personnel, Vancouver

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

M. Y. Beaulieu – Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

R. Welch – General Chairman Vancouver

M. Johnson – Local Chairman, Vancouver

AWARD OF THE ARBITRATOR

Article 12 of the collective agreement, on which the Union relies, provides as follows:

Article 12 Establishment of New Classifications

12.1 New classifications created and not covered by this Agreement but which would normally form part of the bargaining unit will have rates of pay fixed in conformity with similar classifications in the same seniority area which are covered by this Agreement and in which the duties or responsibilities are relatively the same. The rate of any such new classifications shall be mutually agreed to between the Company and the General Chairman before becoming definitely established as a negotiated rate.

12.2 Where there is sufficient change in the responsibilities of a position, rate of pay for that position shall be adjusted by agreement between the Company and the General Chairman.

12.3 Positions (not employees) shall be rated and the transfer of rates shall not be permitted except by agreement between the Company and the General Chairman.

Following the notice by the Company that certain cargo claim positions would be abolished, the Union investigated the matter of the performance of the tasks previously performed by the persons in those positions. The claim in the instant case is, essentially, that work properly performed by members of the bargaining unit is being performed by persons in supervisory positions. Although it is not entirely clear from the material filed, it would appear that the Union seeks either the withdrawal of the notice abolishing certain positions, or the recognition that the new assignments constitute new classifications coming within the scope of the collective agreement, and therefore subject to article 12. In any event, the fundamental question is whether persons presently performing the work which has been the subject of investigation have properly been considered as exclusions from the bargaining unit.

In 1970, the Company established a number of supervisory positions with the title of Claims Representative. It is the Union's position that these persons performed substantially the sort of work which had been performed by Clerks, Grade 5, although they were responsible as well for hiring and firing, and held meetings with terminal supervisors on claim prevention matters. Certain other tasks which had been performed by clerks grade 5 were then assigned to clerks grade 4. That situation, it seems, prevailed until 1974, when the moves now complained of took place. Now, the Company has decentralized certain claims work, and has, by changes in methods, reduced the work load so as to justify certain staff reductions. The Union, however, alleges that in fact non-scheduled employees are performing work previously performed by members of the bargaining unit. In some cases, it is said, these non-scheduled employees are claims representatives and in some cases they are terminal managers. In cases where area claims managers have been established with authority over claims representatives, it is said that the claims representatives are now substantially performing a new job within the bargaining unit, and that notice should have been given under Article 12 with respect to these jobs.

Prior to the change now in question, (and to deal only with the situation at Vancouver, presented by the Company as an example), a claims representative supervised the work of five clerks. It does not appear to be in contention that the claims representative was, at that time, properly excluded from the bargaining unit. The change which was instituted at Vancouver involved the appointment of an additional claims representative, and the abolition of two of the clerks' positions. This change reflected not merely a reassignment of duties, although this occurred to some extent, but also a change in the nature and quantity of work required to be performed. Thus, the Company acknowledges that the claims representatives now perform certain of the work which had formerly been done by clerks. On the other hand, the amount of clerical work has very substantially diminished, and the range of responsibility of the claims representatives has somewhat increased. The substantial question for determination appears to be whether the claims representatives, as their jobs are now constituted, are properly considered as having non-scheduled positions.

The material filed in this matter relates to the content of the job of clerk grade 5, at least as it existed at the time of the changes which occurred in 1970. The material before me, however, simply does not permit any determination as to the extent to which the work now performed by claims representatives (a position which has, since 1970, been excepted from the bargaining unit) may be said to come within the scope of the bargaining unit. Further, and again having regard to what is before me, it would not be possible to support a conclusion that the claims representatives no longer perform a substantial volume of work appropriate to an excepted classification.

For these reasons, it must be held that the Union has not shown that there was an obligation on the Company to negotiate with respect to the classification of claims representative. Accordingly, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL

ARBITRATOR