CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 455

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:

Union contend the Company violated Article 8 of the Job Security Agreement when it did not supply the required notice of change to the General Chairman.

The Union claim two months' salary at pro rata rate in favour of.

Name S.D.M. Level

B. Lee G-1

D. Wilson G-1

J. Majlath G-1

K. Fitzgibbon G-1

B. Larose G-1

V. Simm G-1

T. Ho G-1

employees whose positions were cancelled without the required notice.

EMPLOYEES' STATEMENT OF ISSUE:

The Company, in a letter of January 14th, 1974, advised of the cancellation of twelve positions in the Accounting Department.

The Union requested the Company supply notice of intent as required by Article VIII of the Job Security Agreement, contending the change was a change contemplated by Article VIII with adverse effects on the employees (our letter of January 15th, 1974).

By letter of January 23rd, 1974, the Company declined to supply notice.

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

The material collective agreement provisions are those of the Job Security Agreement, and in particular the following:

> **Article VIII - Technological, Operational or Organizational Changes**
>
> **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.

In the instant case, the Company abolished the positions of several keypunch operators, one lead operator keypunch and four coding clerks, without giving a notice pursuant to Article VIII. The issue is whether such notice ought to have been given in the circumstances. The claim appears to be made particularly with respect to the seven keypunch operators, being the persons listed in the ex parte statement of dispute.

The positions in question seem to have been created during 1973, when the Company was carrying out a feasibility study and making certain preparations for a contemplated change from a manual to a mechanical system of processing customer accounts. In January, 1974 the Company decided that the change was not feasible, and as a result the positions in question were abolished.

In my view the abolition of a group of positions relating to a distinct area of work such as that involved here constitutes an "operational or organizational" change within the meaning of the Job Security Agreement. For somewhat analogous (although factually very different) cases, reference may be had to **Cases No. 271** and **286**. In the instant case, no reference was made to Clause 7 of Article VIII, which excepts "normal reassignment" and "changes brought about by fluctuation of traffic" from the scope of article. The abolition of the assignments in this case did not come within those exceptions and was, in my view, within the scope of Article VIII.

The Company took the position that the assignments were merely of a temporary nature. It has not been shown, however, that these were bulletined as temporary positions and that they came to their natural and, it was stated by the Union, and not denied, that no mention had been made of any temporary feature, and I deal with the matter on the basis of these having been permanent positions as far as the job bulletins were concerned.

It was further contended that Article VIII did not apply because the change would not have "adverse effects" on employees. Although that question was not fully argued and might be reconsidered in another case, it is my view that a change which forces an employee into the exercise of seniority rights should be regarded as one having "adverse effects" within the meaning of Article VIII.

For the foregoing reasons it is my conclusion that this was a case in which notice should have been given pursuant to Article VIII to the employees concerned. To the extent that such employees have suffered loss as a result of the lack of notice, they are entitled to compensation. It was the Union's position that the employees concerned would be entitled to be paid an amount equal to two month's earnings in the abolished positions, regardless of whatever actual loss of earnings they may have suffered. The Company contended that any such compensation was to be reduced by amounts received from employment or by way of unemployment insurance.

The compensation payable by the Company is for loss suffered by the employees and attributable to the violation of the agreement by the Company. There is, as in every case of loss, an obligation on the injured party to take steps to mitigate such losses. In fact, it would appear that a number of the employees concerned in this case went to other jobs, either with the Company or elsewhere. Such earnings are to be deducted from the gross amount that would otherwise be payable to them. The matter of unemployment insurance stands on a different footing. As to that, while the employer is not entitled to deduct any such payments from the amount payable to the employee concerned, the employee himself is not entitled to profit thereby, but must return to the Unemployment Insurance Commission any payments from the employer which duplicate payments made by the Commission. This question is one which has long since been resolved and with which the parties should be familiar.

For the foregoing reasons, it is my award that the grievance be allowed. The employees concerned were entitled to notice pursuant to Article VIII of the Job Security Agreement. Such notice not having been given, the employees are entitled to payment in respect of the period for which notice should have been given, against which may be set off whatever amounts they earned or ought to have earned during that period.

(signed) J. F. W. WEATHERILL

ARBITRATOR