CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 708

Heard at Montreal, Tuesday, June 12, 1979

Concerning

CANADIAN PACIFIC LIMITED

and

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

DISPUTE:

The Union claims that the Company violated Article 3.12 of the Collective Agreement.

JOINT STATEMENT OF ISSUE:

On February 28, 1978, the Company, with the approval of the Canadian Transport Commission abolished certain positions of Agent/Operator, Moose Jaw Division, and established an identical number of Operators' position at the same locations as of March 1, 1978, with subsequent reductions in the rates of pay.

The Organization claims that the duties are unchanged and Article 3.12 of the Collective Agreement has been violated.

It is the position of the Company that there was no violation of the Collective Agreement in that the duties of the positions changed in September, 1968, and December, 1970, with the implementation of Customer Service Centers, but due to an oversight, application had not been made to the Canadian Transport Commission to remove the Agents at these points, at those times.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) D. C. DUQUETTE	(SGD.) R. J. SHEPP
GENERAL CHAIRMAN	GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company:

M. M. Yorston	– Labour Relations Officer, Montreal
J. A. McGuire	– Manager Labour Relations, Montreal
J. A. Sampson	– Supervisor, Labour Relations, Winnipeg
W. Jewsbury	– Regional Supervisor, Data Capture & Procedure, Winnipeg

And on behalf of the Brotherhood:

D. C. Duquette	– General Chairman, Montreal

AWARD OF THE ARBITRATOR

Article 3.12 of the collective agreement is as follows:

> **3.12** Established positions covered by this Agreement shall not be discontinued or abolished and new ones created under different title covering the same class of work for the purpose of reducing the rate of pay.

As appears from the Joint Statement certain positions covered by the collective agreement were abolished on February 28, 1978. Certain new ones were created on March 1, 1978. The new positions were, it is clear from the material before me, in substitution for the old. It is acknowledged that there was in fact no substantial change of duties as between the new and old positions, that is, there was no significant difference in the actual jobs involved on February 28 and on March 1.

If the matter were to be determined simply by considering the situation as of February 28 and comparing it with the situation as of March 1, then it would be easy to conclude that there had in fact been nothing more than a change of job title, and that the Company had created new jobs under a different title for the purpose of reducing the rate of pay.

It is the Company's position, however, that there was in fact a real change in the jobs involved, and that the abolition of one job and the creation of a new job was not for the purpose of reducing pay, but for the purpose of bringing the work actually being performed within the proper classification and rate. Its position is, in effect, that the positions of Agent/Operator in question did not in fact involve the performance of the significant and substantial duties of that classification, but rather involved in substance, the duties of the Operator classification. This had indeed been the case, it is said, for a number of years.

There were in fact changes in operations in 1968 (involving some of the positions in question), and in 1970 (involving others), when certain Customer Service Centres were inaugurated, and which eliminated the need for the "agent" aspects of certain Agent-Operator positions. The Union acknowledges that the Company could, at those times, have changed the classifications, pursuant to Article 3.06. That article is as follows:

> **3.06** The provisions of this Article 3.06 apply to those positions denoted in the above Article 3.03, 3.04 and 3.05.
>
> **3.06.01** The level of a new position shall be determined by mutual agreement between the Superintendent and the Local Chairman. Failing such mutual agreement, the level suggested by the Company will govern, subject to the provisions of 3.06.04 below.
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> **3.06.02** Rates of pay shall be fixed in conformity with the criteria shown in Appendix "B". Whenever the work load or number of staff change sufficiently to warrant a different level, as determined by the criteria, the rate of pay either upward or downward, as the case may be, shall be adjusted accordingly.
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> **3.06.03** Changes in levels shall be made by mutual agreement between the Superintendent and the Local Chairman. Failing such mutual agreement, the level suggested by the Company will govern, subject to the provisions of 3.06.04 below.
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> **3.06.04** The Local Chairman may refer cases under this rule to the General Chairman who may progress the matter as a grievance.

The positions of Agent-Operator and Operator are among the positions to which Article e.06 applies. No new positions were created at the times when the changes in Job duties in fact took place. That was to the benefit of the employees concerned, who were thus "overclassified" for a number of years. When the "correction" finally took place, in 1978, there was in fact no change in job duties.

It may be that job duties change gradually, over a period of time. A point may come when the Company may then seek to reclassify a position which it regards as too highly rated or when, correspondingly, the Union may seek to have it upgraded. The reclassification or the grievance seeking reclassification, will of necessity have to be made at a particular point in time and thus to bear a particular date. There may in fact have been no changes in the job between that date and the day preceding. The point of the reclassification or of the grievance would be, of course,

that the job had changed over a period of time. The fact that no particular changes had occurred between the moment of the reclassification or of the grievance would not be a sufficient reason to prevent the reclassification or to deny the grievance.

Here, the job did change, and the Company had been in a position to have these changes reflected in a new position. Does the fact that it did not abolish the old jobs and create new ones for several years require the conclusion that it has lost its right to do so? A practice which has been allowed to continue and which has been relied on may, in some circumstances, amount to an acknowledgment that the practice reflects the requirements of the collective agreement: see, for example, **Case No. 709**. In that case, the practice of the parties gave meaning to ambiguous provisions in the collective agreement. Here, however, there is no question of ambiguity. The case is simply that positions whose content has been changed have been allowed to continue – to the detriment of the Company, not the employees – for some time. The Company now seeks, on notice, to bring that situation to an end, and to have the positions involved reflect the reality of the work required. From the material before me, I do not consider that the work really is that of the higher classification.

The new positions created cover the work being done by the individuals involved immediately prior to the change. They do not, however, cover "the same class of work", because the work being done ought properly to have come within the new classification: the employees, as I have indicated, had been "overclassified". What was done, then, was not for the purpose of reducing the rate of pay for work properly within a certain classification, but for correcting the classification of work being done.

Accordingly, it is my conclusion that there has been no violation of Article 3.12 in the circumstances of this case. The grievance must accordingly be dismissed.

(signed) J.F.W. WEATHERILL
ARBITRATOR