

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 964

Heard at Montreal, Wednesday, June 8, 1982

Concerning

CP EXPRESS [DIVISION OF CANADIAN PACIFIC EXPRESS & TRANSPORT LTD.]

and

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

DISPUTE:

The application of the rate of pay to Fork Lift Operators.

BROTHERHOOD'S STATEMENT OF ISSUE:

The Memorandum of Agreement signed June 1st, 1981, reads as follows:

Effective June 5th, 1981, the rates of pay for Fork Lift Operators in all Provinces except Alberta and British Columbia, will be increased by twenty cents (20 cents) per hour.

The Brotherhood contends this extra 20¢ should apply to all employees that operate a Fork Lift.

The Company maintains the extra 20 cents per hour only applies to the classification of Warehousemen.

COMPANY'S STATEMENT OF ISSUE:

The Memorandum of Agreement signed June 1st, 1981, reads as follows:

Effective June 5th, 1981, the rates of pay for Fork Lift Operators in all Provinces except Alberta and British Columbia, will be increased by twenty cents (20 cents) per hour.

The Company maintains that the above clause was negotiated on the basis of the Union's demands to increase compensation to the Warehouseman I-2 level for operating Fork Lift equipment and, as such, the twenty cents (20 cents) payment is only applicable to Warehouseman I-2 who operate Fork Lift equipment as a main duty.

FOR THE BROTHERHOOD:

(SGD.) J. J. BOYCE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. R. SMITH
DIRECTOR, INDUSTRIAL, RELATIONS, PERSONNEL & ADMINISTRATION

There appeared on behalf of the Company:

D. R. Smith – Director, Industrial Relations, Toronto
B. D. Neill – Manager, Labour Relations, Toronto
R. A. Colquhoun – Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

J. J. Boyce – General Chairman, Toronto
J. Crabb – Vice-General Chairman, Toronto

AWARD OF THE ARBITRATOR

Although the provision referred to appears clear enough when read by itself, it becomes difficult in application when it is read in the context of other material provisions of the Collective Agreement. It would appear to be simply a general increase for persons in the classification of Fork Lift Operator, not applying to those in Alberta or British Columbia. The difficulty is that there is no classification of Fork Lift Operator, except in the Alberta and British Columbia areas, where it appears as that of Warehouseman Fork Lift Operator.

There exists, in all areas, a classification of Warehouseman, but if it had been intended that the provision in question was simply to provide an hourly increase for Warehousemen, that could easily have been expressed as such. Likewise, however, it must be said that the provision of an hourly premium for the operation of fork lifts could easily have been expressed as such. The provision in question cannot easily be interpreted as having that effect. As a matter of interpretation, it would be my view that the provision can most logically be read as providing for those who (except in Alberta and British Columbia) operate fork lifts as a significant part of their regular duties.

This interpretation is consistent with the bargaining history of the matter, both in terms of the exception of Alberta and British Columbia (where a distinct classification had been established), and in terms of the identification of the group for whom the increase was intended. The cost of the increase was calculated by the Company in relation to some fifty-five persons whom it estimated would be entitled to it, and that cost was accepted by the Union as a basis for negotiation. Were the increase now to be applied to all employees who operate a fork lift, it would apply to about a thousand employees.

A person who may operate a fork lift from time to time is not, as the Company rightly argues, a Fork Lift Operator. While there is, as has been noted, no classification with that title, the increase in question is, for the reasons set out above, one intended, I find, for those engaged in the regular operation of fork lifts and who may thus accurately be referred to as Fork Lift Operators. It is not intended for "all employees that operate a fork lift".

For the foregoing reasons, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR