CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1016

Heard at Montreal, Tuesday, December 14, 1982

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

On January 12, 1982, the Company laid off Trackmen B. E. Blair, D. V. Bell and C. R. Cleghorn, without giving four working days notice as stipulated in Section 15.1, Wage Agreement 41.

JOINT STATEMENT OF ISSUE:

The Union contends that Trackmen, B. E. Blair, D. V. Bell and C. R. Cleghorn should have received the four days notice in accordance with Section 15.1, Wage Agreement 41.

The Union further contends that each of these employees be paid four days pay at their regular rate of pay in lieu of not having received the notice as required in Section 15.1, Wage Agreement 41.

The Company denies the Union's contention and declines payment of claim.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) H. J. THIESSEN	(SGD.) J. B. CHABOT
SYSTEM FEDERATION GENERAL CHAIRMAN	GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

B. A. Demers	– Supervisor, Labour Relations, CP Rail, Montreal
J. H. Blotsky	– Assistant Supervisor, Labour Relations, Montreal
R. A. Colquhoun	– Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen	– System Federation General Chairman, Ottawa
L. DiMassimo	– General Chairman, Ottawa
F. L. Stoppler	– Vice-President, Ottawa

AWARD OF THE ARBITRATOR

Article 15.1 of the Collective Agreement is as follows:

> 15.1 Not less than four working days' advance notice will be given when regularly assigned positions are to be abolished, except in the event of a strike or a work stoppage by employees in the Railway industry, in which case a shorter notice may be given.

The grievors, who had been on layoff, were recalled in early January, 1982, for certain snow removal work. They were advised that the work was temporary, and indeed the grievors were again laid off on January 12. Four days' notice was not given.

Article 15.1 requires that four days' notice be given "when regularly assigned positions are to be abolished". In the instant case, the grievors did not hold "regularly assigned positions", and their being recalled for a few days' work and then laid off again did not amount to the filling or the abolition of any regularly assigned positions.

The grievors were Trackmen "B", and by Article 14.1 of the Collective Agreement, such positions need not be bulletined. Generally speaking, a "regularly assigned position" is one which is established, or is required to be established, by bulletin. That is, generally, the effect of what is said in **Cases 458** and **814**, dealing with similar Collective Agreement provisions. Here, the grievors were not in bulletined positions because of their classification', but in addition their assignments were temporary, and by Article 14 such assignment – even if they would otherwise be subject to bulletin – are to be filled by the senior qualified employees immediately available. Clearly – and again a similar issue is dealt with in **Case No. 458** – the temporary assignments in this case did not amount to "regularly assigned positions" within the meaning of Article 14.1. Indeed in the instant case it could not even be said that there was any "obvious regularity" to their assignments, as there was on the facts of **Case No. 458**, but which still did not establish a "regularly assigned position".

For the foregoing reasons it is my conclusion that there was no violation of the Collective Agreement and the grievance is accordingly dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR