

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1113

Heard at Montreal, Tuesday, July 5, 1983

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

RAIL CANADA TRAFFIC CONTROLLERS

DISPUTE:

Claim of the Union that the Company violated article 8 of the Job Security Agreement, when the position of Operator, Marathon, Ontario, was abolished.

JOINT STATEMENT OF ISSUE:

On June 9, 1982, the Company gave notice pursuant to article 7.08 of the collective agreement of the abolishment of the position of Operator at Marathon, Ontario, effective June 23, 1982. The Union contends that the abolishment was the result of an organizational change and that a three month notice should have been given pursuant to article 8.1 of the Job Security Agreement.

The Company contends that article 8.1 of the Job Security Agreement does not apply.

FOR THE UNION:

(SGD.) D. H. ARNOLD
SYSTEM GENERAL CHAIRMAN

FOR THE COMPANY

(SGD.) P. A. PENDER
FOR: GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company:

P. A. Pender – Supervisor, Labour Relations, Toronto
J. W. McColgan – Labour Relations Officer, Montreal

And on behalf of the Union:

D. H. Arnold – General Chairman, Winnipeg
G. C. Ellison – Vice-General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

On the material before me, the abolishment of the position of Operator at Marathon was an organizational change of a permanent nature. Even although the person immediately affected may have ultimately moved to a higher-paying position, it was a change having "adverse effects on employees" within the meaning of article 8.1 of the Job Security Agreement.

The issue in this case is whether or not the change in question was "brought about by fluctuation of traffic or normal seasonal staff adjustments", within the meaning of article 8.7. That article is as follows:

8.7 The terms operational and organization change shall not include normal reassignment of duties arising out of the nature of the work in which the employees are engaged nor to changes brought about by fluctuation of traffic or normal seasonal staff adjustments.

What occurred in the instant case was not a "normal seasonal staff adjustment". One of the reasons for making the change was indeed a "fluctuation of traffic", in the sense that the work load of the job was affected by a decline in business at the paper mill at Marathon, resulting in a substantial drop in the number of cars loaded there. It is significant, however, that the change was intended to be a permanent one, and that the restoration of traffic volumes to their previous level was not expected to lead to the re-establishment of the position in question.

In **Case No. 423** the distinction was drawn between a reduction in level of operations, and the elimination of a type of service. Often, as in the instant case, the two are related: a type of service (or, as here, an organizational function), may be eliminated because the level of operations (the amount of service provided) is reduced. A similar distinction appears in this case. In **Case No. 1037**, which may be thought to be rather similar to the instant case, a "drastic decline in the amount of work available" led to a "reduction in the need for the classification in question". There was not, however, "a reassignment of a particular type of work from one classification to another", as there was in the instant case, although the Mobile Supervisor, who assumed the duties, was performing similar work at other locations. What occurred in the instant case was a permanent change in the organizational structure. It was certainly open to the Company to make that change, but it was one to which article 8.1 applied, and the notice called for by that Section was required.

For the foregoing reasons, the grievance is allowed. The grievor is entitled to compensation for any net loss of benefits suffered as a result of failure to receive the notice required.

(signed) J. F. W. WEATHERILL
ARBITRATOR