CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1150

Heard at Montreal, Wednesday, November 16, 1983

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

In Bulletin No. 246 dated December 14, 1982, the Regional Engineer, Eastern Region, issued instructions that effective December 30, 1982, at 23.59K, fourteen Maintainer I positions and two Maintainer II positions on the 179.3 hours per four week period were abolished. Effective December 31, 1982, they were re-established on a 40 hour per week basis.

JOINT STATEMENT OF ISSUE:

The Union contends that: **(1.)** The abolishment of these fourteen Maintainer I positions and two Maintainer II positions is a technological, operational or organizational change as specified in article 8.1 of the Job Security Agreement dated April 26, 1982. This requires a notice of not less than three months for such change. **(2.)** The fourteen Maintainer I and two Maintainer II employees are entitled to an incumbency rate of pay as provided in article 8.9 of the Job Security Agreement. **(3.)** The sixteen employees are entitled to the three months notice and the incumbency rate as provided in article 8, and they be paid for any loss of wages since December 30, 1982, until the three month notice is served and then be paid the incumbency rate of pay as provided for in this article.

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

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) H. J. THIESSEN	(SGD.) P. A. PENDER
SYSTEM FEDERATION GENERAL CHAIRMAN	FOR: GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

R. A. Colquhoun	– Labour Relations Officer, CPR, Montreal
P. A. Pender	– Supervisor, Labour Relations, CPR, Toronto
A. Matte	– Manager of Maintenance of Way Equipment, Toronto
D. Huard	– Assistant Supervisor, Maintenance of Way Shop, Toronto

And on behalf of the Brotherhood:

H. J. Thiessen	– System Federation General Chairman, Ottawa
L. M. DiMassimo	– Federation General Chairman, Montreal
E. J. Smith	– General Chairman, London
R. Y. Gaudreau	– Vice-President, Ottawa

AWARD OF THE ARBITRATOR

In accordance with the Employer's Bulletin No. 246 dated December 14, 1982, the Regional Engineer, Eastern Region, issued instructions (affecting in large part The Western Toronto Work Shop) that effective December 30, 1982 at 23.59 hrs. fourteen Maintainer I positions and two Maintainer II positions on the 179.3 hours per four week period were abolished. Effective December 31, 1982, these same positions were re-established on a 40 hour basis. In all respects the new positions were bulletined and were occupied by the incumbent employee (the grievors) whose

jobs had been abolished. The Trade Union claims on the grievors' behalf that the Employer failed to extend three months notice of the operational/organizational changes that it was obliged to do pursuant to article 8.1 of The Job Security Agreement:

> 8.1 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, 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.

The Trade Union has claimed compensation for the three month period during which notice should have been given at the grievors' regular rates of pay under article 8.9 of the collective agreement.

Much of the Employer's brief dwelled on the origins of the 179.3 hours per four week period of payment and the reasons why that method was no longer relevant to the Employer's operational requirements at its Western Toronto Workshop. Indeed, there is no dispute that the Employer's efforts to change the method of payment to a forty hour week (plus overtime worked at time and a half) was motivated by good faith and for a legitimate business reason.

Nevertheless, the effect of the changes was "permanent" and "adversely affected" (to the extent that there resulted a loss of 19.3 guaranteed hours at the overtime rate) the employees concerned. The grievors' jobs at the 179.3 hours per four week method of payment were eliminated and replaced one minute later as aforesaid by new positions involving the performance of the same duties. The Employer was required to go through this charade of eliminating the old positions and bulletining the new positions in order to circumvent, had it simply changed the method of payment, a violation of article 28.1 of the collective agreement.

> 28.1 In view of the intermittent character of the work of pump repairers, except as otherwise provided herein such employees shall be allowed 179.3 hours per four-week period for all work performed during such four-week period. The 179.3 hours per four-week period shall be comprised of 160 straight-time hours and 19.3 hours at time and one-half at the rate to which such employees may be entitled under the provisions of Clause 1(d) of article 26.
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> **NOTE:** When any employee works less than his regular 160 hours in a four-week period, the 19.3 hours referred to in Clause 28.1 will be prorated as per practice currently in effect on each Railway.

Notwithstanding the technical nature of the Trade Union's grievance, I am satisfied that each of the ingredients constituting a breach of article 8.1 have been established. It is common ground that the alleged changes were not "technological changes" but were of a "permanent" nature that "adversely affected" the employees concerned. The uncontradicted evidence demonstrated, however, that the changes that resulted by virtue of the abolition of the old positions and the re-establishment of the new positions with a different method of payment was an "organizational change" that ought to have given rise to the three month advance notice requirement. The changes affected, albeit in only a technical way, the prevailing job structure or classification system in which the affected employees were paid. As I have already indicated, for the Employer to have achieved its objective by merely changing the method of payment, would have constituted a breach of article 28.1. In selecting the alternative method of achieving the same goal the Employer was obliged to extend the employees affected three months notice. Its failure to do so, constituted a breach of article 8.1.

Nor has the Employer successfully brought itself within any of the exemptions provided for under article 8.7 of the collective agreement. More particularly, the changes that were made to the classification system cannot be characterized as "a normal reassignment of duties arising out of the nature of the work in which the employees are engaged ...". I am of the view that the elimination of the positions and the re-establishment of like positions, where the same duties are performed, cannot remotely be characterized as "a normal reassignment of duties".

For all the foregoing reasons compensation shall be directed as requested. The Board shall remain seized in the event of difficulty in the implementation of this award.

(signed) DAVID H. KATES
ARBITRATOR