CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1154

Heard at Montreal, Thursday, November 17, 1983

Concerning

CANADIAN PACIFIC LIMITED

AND

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

DISPUTE:

Claim that the Company violated Article VIII of the Job Security Agreement.

JOINT STATEMENT OF ISSUE:

Bulletin No. 1, file no. 206-1, advised of abolishment of Position No. 58 – Clerk Rate Biller, Estevan, Sask., effective January 14th, 1983, this due to current economic conditions and decline in traffic.

By letter of January 20th, 1983, file no. 101–lb, the Company advised the Union that the duties normally performed by the Clerk Rate Biller would be performed by the Operators at Estevan.

The Union claims not a normal reassignment of duties.

The Company disagree.

FOR THE BROTHERHOOD:

(SGD.) R. WELCH
SYSTEM GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) W. R. PIKE
FOR: GENERAL MANAGER OPERATION & MAINTENANCE

There appeared on behalf of the Company:

R. D. Falzarano – Assistant Supervisor, Labour Relations, Winnipeg
P. E. Timpson – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

M. Krystofiak – System General Chairman, Calgary
G. A. Gilligan – Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

On January 14, 1983, the position of Rate Clerk Biller at Estevan was abolished because of a downturn in business. The incumbent's duties thereafter were performed by an Operator who was represented in an other bargaining unit. The Trade Union alleges that the Employer's actions amounted to an "organizational change" that ought to have triggered the three month notice requirement provided under article 8.1 of the "Job Security" collective agreement. As a result the Trade Union requested reinstatement of the position of "Rate Clerk Biller" to the bargaining unit and compensation for any loss of earnings and other benefits arising out of the Employer's breach. Article 8.1 of the Job Security Agreement reads as follows:

> 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 Employer does not dispute the fact that three months notice was not given the Trade Union in the circumstances described. It argues, however, that in light of the business reasons that prompted the abolition of the position and the past practice of the Company in assigning the duties of the Rate Clerk Biller between the two positions, the Employer's actions were exempted from the requirement to give three months notice of the change. In this regard the Employer's brief meticulously sets out the past practice of making such assignments to "operators". In support of the Employer's claim for exemption it relied on article 8.7 of the Job Security Agreement and the numerous arbitral precedents with respect thereto:

> 8.7 The terms operational and organizational 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.

In light of the evidence I am satisfied that the Employer has established, by virtue of its past practice in making such assignments to operators, its claim for exemption pursuant to article 8. The past practice of assigning the work in question to operators falls squarely within the contemplation of article 8.7. The Employer was motivated having regard to that practice by purely pragmatic, business reasons in making the impugned changes. As a result such changes do not amount to an "organizational change" that should give rise to the requirement for three months notice under article 8.1. Rather this type of "organizational change" constituted, in accordance with article 8.7, a normal reassignment of duties arising out of the nature of the work in which the employees are engaged.

In this regard, I rely on the arbitral precedents in **CROA 381, 423** and **1037** in support of my conclusions. The grievance is accordingly dismissed.

(signed) DAVID H. KATES
ARBITRATOR