

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1172

Heard at Montreal, Tuesday, January 10, 1984

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

On February 1, 1983, J. F. Creasy, Pipefitter, London, Ontario, was advised his position would be abolished effective February 11, 1983.

JOINT STATEMENT OF ISSUE:

The Union contends that: **(1.)** The Company violated Article 8.1 of the Job Security Agreement and a three months notice was required. **(2.)** Mr. J. F. Creasy is entitled to an incumbency rate of pay as required by Article 8.9 of the Job Security Agreement. **(3.)** Mr. J. F. Creasy be paid at the Pipefitters rate of pay from February 11, 1983, until an abolishment notice is served as required by Article 8.1, and thereafter the applicable incumbency rate be established.

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:

P. A. Pender – Supervisor, Labour Relations, Toronto

H. B. Butterworth – Assistant Supervisor, Labour Relations, Toronto

P. E. Timpson – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen – System Federation General Chairman, Ottawa

R. Gaudreau – Vice-President, Ottawa

G. Valence – General Chairman, Sherbrooke

E. J. Smith – General Chairman, London

L. DiMassimo – Federation General Chairman, Montreal

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AWARD OF THE ARBITRATOR

In this case the grievor was advised of the abolishment of his Pipefitter's position on February 1, 1983 and such abolishment was to be made

effective on February 11, 1983. The Trade Union has claimed that such action taken by the Company amounted to "an organizational or operational change" as contemplated by 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 Company has argued that such abolishment of a position does not constitute "an organizational or operational change" as alleged. And, even if it did its action was exempted under Article 8.7 of the Job Security Agreement:

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.

The grievor was hired and was engaged as a pipefitter and was paid accordingly. As the Company's market for passenger service in the Western Ontario Region declined, the need for the grievor's services as a pipefitter decreased. He therefore was given other duties to perform on other B&B projects. In due course the grievor to an ever increasing extent was performing non-pipefitting duties while at the same time he was paid at the rate of pay of a pipefitter.

As a result, the Company resolved to abolish his pipefitter's position and to create a new position that reflected the job duties that he actually performed. And, of course, the grievor was to be paid at a lower rate of pay. When his services were required as a pipefitter the Company was prepared to pay him as it is required to do under the collective agreement at the pipefitter's rate. At the time of the abolishment of his pipefitter's position the grievor had performed over the previous 750 work days, 94 days at pipefitting duties.

I am quite satisfied that the Employer's decision to abolish the grievor's position as a pipefitter amounted to "an organizational or operational change" as contemplated under Article 8.1 of the Job Security Agreement. But I also must agree with the Company's submissions that the changes that were made fell within the exemption contemplated under Article 8.7. What the Company did in the circumstances described was to regularize a situation that had become permanent for a protracted period of time. The grievor's responsibilities in being assigned and reassigned between pipefitting and other bargaining unit work was being placed in a more realistic and correct context. It is my view that the "organizational and operational change" that occurred in these circumstances falls squarely within the notice exemption allowed under Article 8.7 in that the change made "shall not include normal reassignment of duties arising out of the nature of the work in which the employees are engaged"

Accordingly the grievance is denied.

(signed) DAVID H. KATES

ARBITRATOR