

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1177

Heard at Montreal, Wednesday, January 11, 1984

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Brotherhood contends position of Clerk (non-Scheduled) is subject to bulletin in accordance with Section 2, Clause 2.2 of Memorandum of Agreement supplementing Wage Agreement No. 41.

JOINT STATEMENT OF ISSUE:

On January 11th, 1982 a non-scheduled position of Clerk was established in the Maintenance of Way Shop, Coquitlam and the Union contends that the position is covered by the Memorandum of Agreement for Work Equipment Repair Shops.

The Union further contends the position should be bulletined as required by Section 2.2 of the Memorandum, and the qualified employee awarded the position to be covered by the Collective Agreement.

The Company does not agree with the Union's contention.

FOR THE BROTHERHOOD: FOR THE COMPANY:

(SGD.) H. J. THIESSEN (SGD.) L. A. Hill

System Federation General Chairman General Manager, Operation & Maintenance

There appeared on behalf of the Company:

F. R. Shreenan – Assistant Supervisor, Labour Relations, Vancouver

R. A. Colquhoun – Labour Relations Officer, Montreal

A. Wattling – Manager of Work Equipment, Vancouver

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 Manager of the Work Equipment Repair Shops for the Pacific Region, Mr. D. Wattling, was moved from the Company's office in Vancouver, B.C. to the Work Equipment Repair Shop at Coquitlam, B.C. For a short period after the move Mr. Wattling arranged for his typing and stenographic work to be performed by a secretary at his old office. This arrangement was obviously awkward. It suffices to say that the secretarial services performed on Mr. Wattling's behalf at that office was done by a non-scheduled employee.

At the Work Equipment Repair Shop in Coquitlam a scheduled employee was retained as a Truck-Driver Clerk. Although the incumbent in the Truck-Driver Clerk's position was required to perform truck driving duties, a substantial portion of his duties involved clerical functions. The evidence indicated that the incumbent performed some truck driving duties in picking up the mail.

The Company decided to create a new "Non-scheduled" Clerk's position whose functions included serving as Secretary to Mr. Wattling and performing some of the clerical work normally performed by the Truck-Driver Clerk. Mr. Wattling estimated at the hearing that the incumbent in the new position works approximately one hour a day in performing the clerical work that was formerly discharged by the Truck-Driver Clerk. The evidence also indicated that the incumbent performs with greater efficiency the clerical work that was formerly done by the Truck-Driver Clerk. As a result, although the Truck-Driver Clerk continues to perform some clerical work, he has now been released to do more actual driving duties. The Trade Union does not object to the more efficient use by the Company of its manpower resources. It merely insists that the newly created position is actually a Truck-Driver's Clerk position that should have been bulletined as a scheduled position.

Job classifications are never intended to be water-tight compartments that incapacitate an Employer, in the operation of its enterprise, from making the most efficient use of its manpower resources. Or, if the parties intended that the Employer's discretion should be fettered in this regard, the job descriptions pertaining to the positions within a classification should have been incorporated into and formed a part of the collective agreement. While the Trade Union may recoil at the Employer denuding the Truck-Driver Clerk of some of his duties, there is absent in the collective agreement any restriction on the Employer's prerogative to rearrange those duties as it may deem appropriate.

The issue raised in this grievance, therefore, must be resolved on the basis of whether the newly created clerk's position properly falls within a scheduled or non-scheduled classification. What in effect has happened here is that the Employer has merged parts of two positions, a non scheduled and a scheduled, to form a new position.

While an approach for determining what category may be appropriate may involve a measure of the proportion of the work (scheduled or non-scheduled) the new incumbent performs a majority of the time, it does not represent a satisfactory test. For example, the Employer's assertion that only an hour of the Truck-Driver Clerk's position is presently discharged by the new incumbent may be misleading because of such variables as efficiency, skills and experience. Moreover it does not follow merely because an hour of bargaining unit work is performed by the new clerk that she is necessarily occupied the rest of her time in work that would involve Mr. Wattling. At least, no evidence was adduced to provide me with an accurate breakdown of those specific duties save to the extent that Mr. Wattling's work may involve confidential matters relating to the Company's operations.

I am satisfied that the most useful test that might be applied in resolving this dispute is the "purpose" test. Surely, the motivating factor that caused the Company to create the new position was Mr. Wattling's need for a secretary. It is clear from the material before me that Mr. Wattling did not require a full time secretary. Accordingly, for purposes of efficiency the Company reassigned some of the Truck-Driver Clerk's duties to the new position. At the same time the incumbent Truck-Driver Clerk was released to perform more truck driving duties. "In pith and substance" the newly created clerk's position was intended to be a non-scheduled position designed to assist Mr. Wattling.

The Company, therefore, was not required to bulletin the position as requested by the Trade Union. The grievance is denied.

(signed) DAVID H. KATES

ARBITRATOR