

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1288

Heard at Montreal, Thursday, October 11, 1984

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 7 and article 24.7 of the collective agreement.

#### **JOINT STATEMENT OF ISSUE:**

In January 1984, the Company established the position of "Assistant Supervisor Mailroom" without consultation with the Union.

The Union contends the position should have been established in accordance with article 7, or appointment made in accordance with article 24.7 of the collective agreement.

The Company has denied any violation of the Agreement.

#### **FOR THE BROTHERHOOD:**

**(SGD.) J. MANCHIP**  
GENERAL CHAIRMAN

#### **FOR THE COMPANY:**

**(SGD.) G. D. SIMON**  
OPERATIONS DIRECTOR, COMPUTER AND COMMUNICATIONS

There appeared on behalf of the Company:

D. E. Limerick	– Manager, Mail Microfilm & Facilities, Computers & Communications, Montreal
G. D. Simon	– Operations Director, Computers & Communications, Montreal
L. J. Megin	– Operations Facilities Manager, Computers & Communications, Montreal
P. E. Timpson	– Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

J. Manchip	– General Chairman, Montreal
D. Bujold	– Vice-General Chairman, Toronto
D. Toupin	– Local Chairman, Montreal
R. Dubuc	– Grievor

## AWARD OF THE ARBITRATOR

As the parties' briefs indicated the Company created the new position of Assistant Supervisor Mailroom, effective January, 1984.

The Trade Union's first submission was that the new position (occupied by Mr. J. A. Genereux) is a bargaining unit position that imposes upon the Company the obligation to negotiate an appropriate rate of pay pursuant to article 7.1 of the collective agreement. Alternatively, it was argued that if the position is excluded from the bargaining unit then the Company was in violation of article 24.7 in failing to give "prior consideration" to the bargaining unit employee (Mr. Dubuc) in the filling of the position.

The principal issue raised is whether the position of "Assistant Supervisor", to the extent supervisory functions are performed, warrants the conclusion that it is an excluded position from the bargaining unit by reason of the exercise of managerial duties and responsibilities.

The evidence disclosed that the duties performed by the Assistant Supervisor include the exercise of some supervisory functions when the Supervisor is absent. The parties are agreed that the Supervisor is excluded from the bargaining unit because he clearly performs managerial functions. And, there is no doubt that when the Supervisor is not available by reason of a leave of absence or a special assignment of his Superior, the Assistant Supervisor performs the functions of the Supervisor. To this extent the Assistant Supervisor performs as part of his duties and responsibilities supervisory functions. But does this phenomena make the Assistant Supervisor a "Manager" who ought to be excluded from the bargaining unit?

The job description indicates that these supervisory functions are only performed "in the absence of the supervisor". In most part the vast majority of the duties of the Assistant Supervisor entail such functions as ensuring timely mail service is delivered to all departments within CP, ensuring that Canadian, U.S. and overseas mail is processed daily, determining classification of bulk mail shipments, recommending operational changes to improve service, acts as liaison with Canada Post Transportation Carriers and other Couriers, ensuring express airborne waybills are completed properly, conducting studies on mail flow to improve service, verifying that insufficient postage charges are properly deducted, arranging the distribution of city telephone directory and Company telephone directory, etc., etc. In short, given the detailed functions described in the Assistant Supervisor's job description I am hard-pressed to find, despite the important responsibilities that are discharged, that the exercise of managerial functions constitutes a substantial portion of the Assistant Supervisor's principal duties.

It is trite law that *prima facie* an employee's position is non-managerial until otherwise rebutted by evidence to the contrary. In other words the onus rests on the Employer to advance sufficient, persuasive proof that an employee should be excluded from the bargaining unit by reason of his exercise of managerial functions.

The evidence adduced before me only demonstrates that some of the time (i.e., in absence of the Supervisor) does the Assistant Supervisor perform supervisory duties. And, as the job description provides the rest of his time the Assistant Supervisor performs what can only be perceived as non-supervisory (i.e., bargaining unit) work.

In my view, it is incumbent upon the Employer to demonstrate that the Assistant Supervisor on a regular, predictable and frequent basis performs as a substantial part of his duties and responsibilities managerial functions. The Employer's task was to clearly show that a direct conflict of interest would result that would impair the Employer in the operation of its enterprise should the Assistant Supervisor be included in the bargaining unit. The Employer, in my view, has not discharged this very substantial burden.

In order that my decision is made perfectly clear, I wish to make the following remarks. It is simply not sufficient for the Employer to demonstrate that the intermittent performance (in the absence of the Supervisor) of incidental "supervisory" duties with respect to the work force, such as reporting on potential disciplinary infractions, engaging in scheduling operations, or arranging for overtime assignments, is sufficient to create the conflict of interest that would impair the Employer's operations. These responsibilities, albeit supervisory, are not necessarily in contradiction with the conclusion that the Assistant Supervisor ought to be included in the bargaining unit by reason of his "employee" status. The performance of the duties described in the job description are essentially non-supervisory.

In any event, in light of my finding that the newly created position of Assistant Supervisor is not an excluded position, the Company is directed to meet with the Trade Union for the purposes set out in article 7.1 of the collective agreement.

I shall remain seized.

**(signed) DAVID H. KATES**  
ARBITRATOR