CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1291

Heard at Montreal, Tuesday, November 13, 1984

Concerning

ONTARIO NORTHLAND RAILWAY

AND

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The establishment of positions of Warehouseman No. 3/Motorman and Warehouseman No. 3/Cashier.

JOINT STATEMENT OF ISSUE:

Effective July 16, 1984, the Company, in accordance with article 19.6(a) of the collective agreement, established a position of Warehouseman No. 3/Motorman at Timmins and a position of Warehouseman No. 3/Cashier at New Liskeard replacing former positions of Warehouseman No. 3 at both locations.

The new positions were accorded the rate of pay applicable to the highest class of work assigned to them. The Warehouseman No. 3/Cashier position was given the Cashier's rate and the Warehouseman No. 3/Motorman position was given the Warehouseman No. 3 rate.

The Brotherhood did not agree to the new classifications and rates and entered a grievance in accordance with article 19.6(d).

The matter is now being referred to arbitration under articles 19.6(d), 19.6(e) and 10.11 of the collective agreement.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) T. N. STOL	(SGD.) P. A. DYMENT
REPRESENTATIVE	GENERAL MANAGER

There appeared on behalf of the Company:

A. Rotondo	– Manager Labour Relations, North Bay
J. E. Savill	– Manager Express Services, North Bay

And on behalf of the Brotherhood:

T. N. Stol	– Representative, Don Mills

AWARD OF THE ARBITRATOR

As the Joint Statement of Issue describes the Employer, for operational reasons, created two new positions at Timmins and New Liskeard, Ontario, by combining the functions of two abolished positions to make one. And once the new positions were created the Company accorded them a rate of pay at the height of the job classification.

The Trade Union contests the propriety of the Company's action and requests that the two new jobs be nullified. Alternatively, if I was not disposed to do this it was requested that I attach a higher rate of pay than what was accorded the positions by the Company. The Trade Union could point to no provision of the collective agreement that might deter the Company from doing what it did and would thereby confer the jurisdiction upon an Arbitrator to nullify the Company's actions.

The relevant provision of the collective agreement governing my jurisdiction in this regard is set out in article 19.6(e) which reads:

> (e) It is specifically agreed that no arbitrator shall have the authority to alter or modify the existing classifications or wage rates but he shall have the authority, subject to the provisions of this Agreement, to determine whether or not a new classification or wage rate has been set properly within the framework of the railway's established classification and rate setting procedure.

The limits of my authority, according to article 19.6(e) is simply restricted to the conduct of an inquiry into "whether or not the new classification and wage rate has been set properly within the framework of the railway's established classification and rate setting procedure". The Trade Union adduced no material to demonstrate that the two new jobs that were created from the merger of the positions in question did violence to either the correct classification system or rate setting procedure.

On the other hand, the Company's brief demonstrated that in the past a precedent was established with respect to the creation of a Warehouseman No. 3/Motorman position and the negotiation of a satisfactory wage rate with the Trade Union with respect thereto. Moreover, it was also shown that the same procedure with respect to that position was adopted by the Company with respect to the Warehouseman No. 3/Cashier position. In other words, the evidence established that compliance was made with the exigencies of article 19.6(e) in the creation of the two combined positions.

Accordingly, it follows that there remains no jurisdiction for an Arbitrator to unilaterally accord the Trade Union its request that I annul the two new jobs or increase the rate of pay that was conferred by the Company to those jobs. As a result, the grievance is dismissed.

(signed) DAVID H. KATES
ARBITRATOR