

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1439

Heard at Montreal, Thursday, November 14, 1985

Concerning

CP EXPRESS AND TRANSPORT LTD.

and

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

DISPUTE:

Concerns regularly assigned employee Mr. T. Bate, Edmonton, Alberta, not being provided a forty-eight hour advance notice of lay off as required in article 7.3.8 of the collective working agreement and claim for unpaid wages for Monday, March 11, 1985, at the applicable rate.

JOINT STATEMENT OF ISSUE:

The Company's position is that this employee was not regularly assigned, that he was unassigned, therefore, there was no violation of the collective working agreement.

The Union's position is that this employee was regularly assigned and in the week before Monday, March 11, 1985, had worked March 3, 4, 5, 6 and 7, that article 7.3.8 addresses itself to regularly assigned employee, not bulletined positions as suggested by the Company Officer and that inasmuch as this employee was regularly assigned he should have been provided a forty-eight hour advance notice before being laid off which the Company Officer failed to do.

The relief requested is for the payment of eight hours wages for Monday, March 11, 1985, in the name of Mr. T. Bate.

FOR THE BROTHERHOOD:

(SGD.) J. J. BOYCE
SYSTEM GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) N. W. FOSBERY
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

N. W. Fosbery – Director Labour Relations, Willowdale

And on behalf of the Brotherhood:

G. Moore – Vice-General Chairman, Moose Jaw

M. Flynn – Vice-General Chairman, Vancouver

J. Bechtel – Vice-General Chairman, Toronto

J. Marr – Special Representative, Saint John

AWARD OF THE ARBITRATOR

Article 12.10 of the collective agreement provides as follows:

The term "work week" for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work; and for spare or unassigned employees shall mean a period of 7 consecutive days starting with Monday. (emphasis added)

The grievor during the week before his layoff was required to replace a "bulletined" employee who was absent from work due to sickness. At no time prior to the grievor's layoff was he a "bulletined" employee.

The Trade Union has argued that because an employee is not "bulletined" does not necessarily mean he cannot be treated as a "regularly assigned employee" for the purpose of the 48 hour advanced notice requirement before a layoff might occur. The Trade Union argued that because the grievor worked five consecutive days prior to being placed on layoff he should have been treated as a "regular assigned employee". The relevant provision governing the Company's obligation to provide advance notice of an employee's layoff reads as follows:

7.3.8 Regularly assigned employees who are to be laid off and are unable to hold work on their local seniority roster shall be provided 48 hours' advance notice of such layoff. Unassigned employees shall be given as much advance notice as possible.

In resolving this dispute I agree with the Company's argument with respect to the distinction between a "regularly assigned employee" and a "spare" or "unassigned employee". An employee's status is governed by whether he is the recipient of a "bulletined" position. In that case because "the regularly assigned employee" holds a known work schedule the employer should not have any excuse for not knowing at least 48 hours in advance of a layoff of whether that employee's services will be required. On the other hand because "a spare or unassigned employee" does not know from day to day what particular assignment he may or may not hold the notice requirement imposed on the Company with respect to a prospective layoff is confined to "as much advance notice as possible".

In the grievor's particular situation he was an unassigned employee who happened to be replacing "a regularly assigned employee" for a protracted period before his layoff. This circumstance does not convert the grievor's employment status from an unassigned employee to a regularly assigned employee. He still remains at all material times an unassigned employee who would not be entitled to the 48 hour advance notice of layoff.

He would only be entitled, as article 7.3.8 prescribes, to as much advance notice as is possible. And, since no claim was made on the grievor's behalf under that provision of article 7.3.8 of the collective agreement I am compelled to dismiss the grievance.

(signed) DAVID H. KATES
ARBITRATOR