CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1489

Heard at Montreal, Wednesday, March 12, 1986

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. D.M. Figueiredo, Machine Operator, B&B Department was advised January 22, 1985, that his position would be abolished February 7, 1985.

JOINT STATEMENT OF ISSUE:

The Union contends that: **(1.)** The position which Mr. D. M. Figueiredo held is still in existence. **(2.)** The Company violated Section 15.1, Wage Agreement No. 41, when the position held by Mr. D. M. Figueiredo was abolished. **(3.)** Mr. D. M. Figueiredo be reinstated to the position of Machine Operator he held prior to abolishment and be paid for any loss in wages and benefits from February 7, 1985, and onward.

The Company denies the Union's contention and declines payment.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) H. J. THIESSEN	(SGD.) R. E. NOSEWORTHY
SYSTEM FEDERATION GENERAL CHAIRMAN	FOR: GENERAL MANAGER, OPERATIONS & MAINTENANCE

There appeared on behalf of the Company:

D. A. Lypka	– Supervisor Labour Relations, Winnipeg
R. Noseworthy	– Assistant Supervisor Labour Relations, Winnipeg
R. A. Colquhoun	– Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen	– System Federation General Chairman, Ottawa
L. M. DiMassimo	– Federation General Chairman, Montreal
M. L. McInnes	– General Chairman, Winnipeg
V. Dolynchuk	– General Chairman, Edmonton
R. Y. Gaudreau	– Vice-President, Ottawa
G. Schneider	– System Federation General Chairman, CN Lines West, Winnipeg

AWARD OF THE ARBITRATOR

The simple issue in this case is whether under the collective agreement the Company can take appropriate measures to rationalize its work force with a view to eliminating redundant positions.

Indeed, this effort to minimize its manpower costs may very well be prompted, as was argued herein, in the circumstances of a business downturn that is caused by an ailing economy.

The Trade Union does not contest the notion that the notice of abolition of the machine operator's position (i.e., truck driver) occupied by the grievor was made within the requisite time limits provided by Article 15.1 of Wage Agreement No. 41.

The Trade Union's argument, in succinct terms, is that so long as the truck driving duties (formerly discharged by the grievor) continue to be performed by other employees the Company had no basis for abolishing that particular position. Accordingly, its notice of abolition made under Article 15.1 was improper.

In my view just because the Company has abolished a truck driver's position it does not necessarily mean that the Employer intended the elimination of a truck driving service. Quite clearly, what the Company purported to do was to redistribute the requisite truck driving functions formerly performed by Mr. Figueiredo amongst its several remaining employees. In that sense the Company sought to make more economic use of its existing manpower resources and at the same time eliminate those manpower resources that, in its view, were no longer necessary.

In the absence of an explicit provision of the collective agreement that prevents the Company from engaging in this type of manpower rationalization I am of the opinion that it may proceed to abolish positions in accordance with the management discretion given it under the terms of the collective agreement. Indeed, no express provision was raised by the Trade Union that would warrant my thwarting the Company's action in the circumstances that were described.

Rather, an arbitral precedent was raised in **Re International Chemical Workers, Local 798, and Union Gas Co. of Canada Ltd.** (1972) LAC 159 where an arbitration board ruled that, in the absence of changing circumstances, the Employer cannot cancel a posted vacancy for bidding by bargaining unit employees. As the Company pointed out, I fail to see the relevance of the situation cited in that precedent to the circumstance of a redundant work force that requires the Company, however unfortunate to the employees concerned, to eliminate or abolish unneeded jobs.

Since there was proper compliance with the notice provisions contained in Article 15.1 of Wage Agreement No. 41, I find the Company has not contravened that provision. The grievance is accordingly denied.

(signed) DAVID H. KATES
ARBITRATOR