

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1525

Heard at Montreal, Wednesday, June 11, 1986

Concerning

CP EXPRESS AND TRANSPORT LIMITED

and

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

EX PARTE

DISPUTE:

Concerns the posting of Dispatch K-1 Clerical positions in line with the collective agreement in the Port Coquitlam, British Columbia Terminal.

BROTHERHOOD'S STATEMENT OF ISSUE:

The Union contends that the Company has been using management supervisors to perform Bargaining Unit Work of Clerical Dispatcher (K-1) positions, and that by doing so have been in violation of the collective agreement as well as past practice.

The Company contends that its Dispatch Supervisors are not performing Bargaining Unit Work and that the position of Dispatch Supervisors has been ongoing for many years.

The Union is seeking relief in the form of the Company posting Dispatch positions in accordance with the collective agreement for City and Highway Dispatch Departments.

FOR THE BROTHERHOOD:

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

There appeared on behalf of the Company:

N. W. Fosbery – Director Labour Relations, Toronto

And on behalf of the Brotherhood:

M. Flynn – Vice-General Chairman, Vancouver

J. J. Boyce – General Chairman, Toronto

M. Gauthier – Vice-General Chairman, Montreal

B. Lind – Local Chairman, Vancouver

AWARD OF THE ARBITRATOR

This case arises out of the merger of several of the Employer's predecessor companies to form Canadian Pacific Express and Transport Limited. There is no argument that the relevant document that I must interpret is the collective agreement between BRAC and the Company (effective January 1, 1983). That collective agreement simply

provides for an "all employee unit". Included in the clerical position classification for wage purposes (article 25.2) is the position of dispatcher K-1 (see page 58, collective agreement).

The complaint in this case is essentially that the Company is treating the occupants of the dispatcher K-1 position as non-bargaining unit employees. And, as a result thereof the Company is charged with not complying with the posting provisions of the collective agreement for filling these jobs as vacancies may from time to time arise. I would assume, if the Trade Union's position is correct, then other relevant provisions of the collective agreement may also be compromised as they might pertain to the dispatcher's job.

The Company's position was two-fold. Firstly, an adjournment was requested pending the outcome of certain **Canada Labour Relations Board** proceedings are completed on the issue of whether the employees who presently occupy the dispatcher's position are "managerial" or "supervisory" as the case may be for purposes of The **Canada Labour Code**.

Secondly, the Company's position is that the employees in question occupy "dispatch supervisor" positions and therefore, as was the case in previous collective agreements that preceded the merger, these employees should be excluded from the bargaining unit.

With respect to the Company's second position it was conceded that there is absent any reference in the current collective agreement to the position of "dispatch supervisor". In addition, the parties are also *ad idem* on the fact that the employees the Union claims to be "dispatchers" for purposes of the collective agreement and the Company claims to be "dispatch supervisors" are one and the same.

The Company asserts, however, that the employees whom the Trade Union claims are "dispatchers" under the collective agreement are intended to be "dispatch clerks". These employees perform composite duties which I understand requires them from time to time to perform amongst their clerical duties dispatch functions. It is also common ground that dispatch clerks as described by the Company are properly included in the bargaining unit.

In dealing with the Company's submissions it ought to be stressed that my responsibility is to interpret the collective agreement between the parties and, more particularly, in this case, to determine whether the collective agreement covers under the term "dispatchers" the "dispatch supervisors" whom the Company states are excluded employees. In that light it is my view that whether these employees may or may not be "employees" for purposes of The **Canada Labour Code** is irrelevant to the exercise of my jurisdiction for purposes of determining their status for purposes of the collective agreement. It may very well be, in other words, that the **CLRB** may declare these same employees to be managerial where the language of the collective agreement encompasses them for purposes of collective bargaining representation. In this particular regard it is noted that the recognition clause of the collective agreement contains no express line of demarcation for purposes of managerial or supervisory exclusions.

As a result I have not been satisfied that an adjournment of these arbitration proceedings pending the outcome of the **CLRB** proceeding will serve any practical or useful purpose with respect to the issue raised herein. The Company's request is accordingly denied.

In dealing with the Company's second submission I am satisfied that the "dispatcher's function" was intended to be encompassed under the dispatcher's position as contained and described in the collective agreement. The Trade Union's reference to the job description of the dispatcher's position confirms the conclusion that the functions engaged in by the incumbents in directing and monitoring the Company drivers constitutes bargaining unit work. Moreover, as there exists no classification of "dispatch supervisors" under the collective agreement evidencing their exclusion from the bargaining unit, I am compelled to dismiss the Company's submission that the parties implicitly intended their exclusion. It therefore follows that "dispatchers" are not "dispatch clerks" but are the very same employees whom the Company described as "dispatch supervisors".

As a result the Company is directed to treat the employees who occupy the "dispatcher" position as employees for purposes of the collective agreement. And all the provisions of the collective agreement that pertain to the dispatcher position should be adhered to.

I shall remain seized.

(signed) DAVID H. KATES
ARBITRATOR