

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1729

Heard at Montreal, Wednesday December 9, 1987

Concerning

CANADIAN PACIFIC LIMITED

And

CANADIAN SIGNAL AND COMMUNICATIONS UNION

DISPUTE:

The position of S & C Foreman at Toronto Yard was bulletined as an S & C Leading Maintainer on Bulletin #10 date 86-10-01.

JOINT STATEMENT OF ISSUE:

The Union contends that the Company was in violation of Article 1.6 of Agreement #1.

The Company denies the Union's contentions.

FOR THE UNION:

(SGD) JOHN E. PLATT
NATIONAL PRESIDENT

FOR THE COMPANY:

(SGD) R. A. DECICCO
FOR: GENERAL MANAGER, OPERATION & MAINTENANCE EAST

There appeared on behalf of the Company:

R. A. Decicco – Supervisor Labour Relations, Toronto
R. Colquhoun – Labour Relations Officer, Montreal

And on behalf of the Union:

J. E. Platt – National President, Ottawa
A. B. Vingeault – Assistant to the President, Montreal

AWARD OF THE ARBITRATOR

The Union maintains that the Company, having initially established a position of Signals and Communications Foreman at Toronto Yard in April, 1970, cannot replace the incumbent in that position by an employee classified as an S & C Leading Maintainer.

It relies on Article 1.6 of Agreement No. 1 which provides as follows

Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of rules in this agreement.

The material establishes that on March 1969 a Memorandum of Agreement became effective, creating the then new classification of "Leading Signal Maintainer". That position was used to staff the same position that is the subject of this grievance in the automated hump yard known as Alyth Yard in Calgary Alberta in the spring of 1970. On August of 1984 a similar position was established in the Saint Luc Yard in Montreal. In neither case did the Union grieve the assignment of the duties in question at those locations to an S & C Leading Maintainer. Similarly, in March of 1985 when the incumbent at the Saint Luc Yard vacated his position, the posting of that job as a Leading Signal Maintainer was not grieved.

The Arbitrator is satisfied that the Company erred in 1970 when it designated and bulletined the Toronto position as "Permanent Maintenance Signal Foreman". There is nothing, in principle or in equity, nor is there anything within the meaning of Article 1.6, to prevent the Company from correcting that error, which operated for the benefit of at least one employee for many years. This is not a circumstance in which the Union can assert an estoppel. If anything, the Letter of Understanding of 1969, together with the Union's acquiescence in the assignment of the Montreal and Calgary positions to the Leading Signal Maintainer's classification confirm that the intention of the parties is consistent with the corrective action taken by the Company in relation to the Toronto Yard. In these circumstances no violation of the Collective Agreement is disclosed and the grievance must be dismissed.

(sgd.) MICHEL G. PICHER
ARBITRATOR