CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1792

Heard at Montreal, Wednesday, June 15, 1988

Concerning

CANADIAN PARCEL DELIVERY
(CP EXPRESS AND TRANSPORT)

And

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Claim for 12 1/2 hours by CanPar employee J. Thompson, Toronto, Ontario due to his regular hours of work being changed.

JOINT STATEMENT OF ISSUE:

Employee J. Thompson, who holds a permanent bulletined position, had his starting and ending times changed by more than one hour, causing him to lose a total of 12 1/2 hours of work covering the dates of December 24 and 30, 1986, and January 6 and 8, 1987.

The Union claims the Company violated Article 5.2.12 of the Agreement and requested payment of 12 1/2 hours to be paid to employee J. Thompson.

The Company declined the Union's request claiming Mr. Thompson had been properly laid off.

FOR THE UNION:

(SGD.) J. J. BOYCE
GENERAL CHAIRMAN
SYSTEM BOARD OF ADJUSTMENT 517

FOR THE COMPANY:

(SGD.) B. D. NEILL
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

D. Bennet	– Labor Relations Officer, Toronto
B. F. Weinert	– Labour Relations Officer, CPET, Toronto

And on behalf of the Union:

J. J. Boyce	– General Chairman, Toronto
J. Crabb	– Secretary/Treasurer, Toronto

AWARD OF THE ARBITRATOR

By letter dated December 19, 1986 the grievor was given the following notice:

> Due to present business conditions, it is necessary to have a period of layoff. Please consider this letter as advance notice of layoff as per Article 5.3.6 of the Collective Agreement. Your attention is also drawn to Article 5.3.1 in the event you are able to displace a junior employee.
>
> Some work may occur on a day-to-day basis, and you will be called in when it is available. This occasional work does not constitute a recall.

> Until such time as your are required back to work on a permanent basis, please consider yourself on layoff effective December 22nd.

The letter sent to the grievor also contained an attachment listing his hours of work during the period of "layoff":

> Your regular hours have been cancelled during the Holiday period. Reduced hours of work for the days in-between December 22 - January 9 are as:
>
> | | |
> |---|---|
> | December 22, 1986 | 1:00 AM to approximately 8:30AM |
> | December 23, 1986 | 1:00 AM to approximately 8:30 AM |
> | December 24, 1986 | 2:00 AM to approximately 8:30 AM |
> | December 29, 1986 | Layoff |
> | December 30, 1986 | 3:00 AM to approximately 8:30 AM |
> | January 5, 1987 | Layoff |
> | January 6, 1987 | 1:30 AM to approximately 8:30 AM |
> | January 7, 1987 | 1:30 AM to approximately 8:30 AM |
> | January 8, 1987 | 1:30 AM to approximately 8:30 AM |

The position of the Company is that a layoff was implemented, and between December 22, 1986 and January 8, 1987 the grievor was called in for "occasional" work in accordance with the timetable set out in his notice of reduced hours. The Company submits that what took place was a layoff and that the grievor was given 24 hours' advance notice of the layoff in accordance with Article 5.3.6 of the Collective Agreement.

The Union characterizes these events very differently. It submits that what transpired was not a layoff at all but a reduction of hours to accommodate the seasonal work fluctuation of the Christmas period. It submits that in these circumstances the Company was required to comply with Article 5.2.12 of the Collective Agreement which provides as follows:

> **5.2.12** When the hours of a permanent position are changed and effect the starting or ending time by more than one hour and/or the assigned rest days are altered, the position will be rebulletined promptly, but only to the Local Seniority Group concerned.

In the Arbitrator's view it is substance, and not form, which must prevail. I accept that the grievor was laid off on December 29, 1986 and January 5, 1987, days on which he was notified in advance that there would be no work available for him. To that extent, therefore, the Company is correct in stating that it complied 5.3.6 of the Collective Agreement by providing him the notice it did. That does not deal with the full reality, however. It is clear from the content of the schedule of reduced hours of work which was provided to the grievor on December 19, 1986 that what occurred in substance is that the hours of his permanent position were changed. Because the change was for a period of more than fourteen calendar days, I must accept the Union's characterization that the Company incurred an obligation under Article 5.3.12 to rebulletin the position. The Company's reasons for advancing the fiction of a layoff may be understandable, given its desire to respond flexibly to the needs of the holiday season. Alternative courses of action might indeed impact negatively on employees, particularly if they are required to accept the rates of a part-time position for this period. However, there does not appear to be any scope within the language of the Collective Agreement for treating what transpired as a layoff coupled with the availability of occasional work.

For the foregoing reasons the grievance must be allowed. The Arbitrator finds and declares that the Company violated Article 5.2.12 of the Collective Agreement by failing to rebulletin the grievor's position promptly upon implementing a change in hours which affected the starting or ending time by more than one hour. The Union did not advance, however, any evidence to establish, on the balance of probabilities, that Mr. Thompson suffered an actual loss of available working hours which he would have had if the Collective Agreement had been correctly applied. In these circumstances no order for compensation can be made. I nevertheless retain jurisdiction in the event of any dispute between the parties respecting the interpretation or implementation of this award.

June 16, 1988

(signed) MICHEL G. PICHER
ARBITRATOR