

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1796

Heard at Montreal, Wednesday, June 15, 1988

Concerning

### CANADIAN PACIFIC LIMITED

And

### TRANSPORTATION COMMUNICATIONS UNION

#### **DISPUTE:**

Claim that the incumbent of Position No. 108, M.I.C. Clerk, in the Chief Accountant's Office, Toronto, at the time the position was abolished, was entitled to the benefits of Article 8.9 of the Job Security Benefits Agreement, as well as all other employees affected by the abolishment.

#### **JOINT STATEMENT OF ISSUE:**

The Company served a notice of abolishment, in accordance with Article 8.1 of the Job Security Benefits Agreement, that Position No. 108, M.I.C. Clerk would be abolished effective August 11, 1986.

The position became vacant, due to the dismissal of the incumbent on July 25, 1986. The position was bulletined, with the successful applicant, for the position, being considered temporary.

The Union contends, the position should have been bulletined, in accordance with Article 23.1 of the Collective Agreement, and continue to be classified as permanent until the date of abolishment.

The Union further contends the Company violated Article 8.9 of the Job Security Benefits Agreement, by not considering the incumbent as holding the position permanently, at the time of abolishment.

Claim was made on behalf of employees J. Dwyer, M. Davis and B. Brauweiller.

The Company denied any violation of the Collective Agreement or of the Job Security Benefits Agreement.

#### **FOR THE UNION:**

**(SGD.) J. MANCHIP**

**FOR: GENERAL CHAIRMAN**

#### **FOR THE COMPANY:**

**(SGD.) W. P. COTNAM**

**ASSISTANT COMPTROLLER EXPENSES**

There appeared on behalf of the Company:

P. E. Timpson - Labour Relations Officer, Montreal  
R. Caza - Chief Accountant, Toronto  
P. C. Delaney - Personnel Manager, Rail Accounting, Montreal

And on behalf of the Union:

J. Manchip - Vice-General Chairman, Toronto  
C. Pinard - Vice-General Chairman, Montreal

## **AWARD OF THE ARBITRATOR**

The material establishes that on May 7, 1986 the Company issued a notice under Article 8.1 of the Job Security Agreement that effective August 11, 1986 the position of Clerk M.I.C. Invoices in the Chief Accountant's Office in Toronto would be abolished. Between the time of that notice and the date of abolishment the incumbent in the position, Ms. Lee, was discharged for cause. Ultimately the Company bulletined the position vacated by Ms. Lee. Although the initial bulletin was for a permanent position, the Company corrected that notice by reissuing Bulletin No. 78 on August 1, 1986 requesting applications to fill the position on a temporary basis between August 6 and 11, 1986 at which time the position was scheduled to be abolished.

The successful applicant to Bulletin No. 78, Mr. Dwyer, worked the position for only one day, August 7, 1986. He was on vacation August 8 and August 9 and 10 were assigned days off. In accordance with the notice of May 7, 1986 the position was abolished August 11, 1986.

The Union's position is that the benefits provided for in the Job Security Agreement for persons who are adversely affected by the abolishment of positions should apply to Mr. Dwyer. The Union relies on the provisions of Article 23.1 of the Collective Agreement which provides as follows:

- 23.1** Except as otherwise provided in Article 5 and Clause 23.4, new positions or vacancies shall be promptly bulletined for a period of ten calendar days in the seniority group where they occur.

The Union argues that the Company was obliged to consider Mr. Dwyer as the permanent incumbent in the position previously held by Ms. Lee, and to accord him all of the benefits of the notice issued previously on May 7, 1986. It submits that Mr. Dwyer would have been entitled to rate protection under the Job Security Agreement, and to exercise his seniority rights, rather than be required to revert to his previous permanent position upon the expiry of what the Company characterized as his occupation of a temporary position. In the Union's view the Company was required to either bulletin a permanent position for the vacancy left by Ms. Lee or abolish that position. However, in fact, the position was already abolished by virtue of the notice of May 7. Mr. Dwyer knew the conditions of employment on that position when he bid on the bulletin.

In the Arbitrator's view the requirement within Article 23 of the Collective Agreement to bulletin vacant positions does not impose on the Company an obligation to bulletin a position as "permanent" which it has already declared to be abolished at a fixed date. Its obligation under the article is simply to indicate whether a position is temporary, as required in Article 23.11, which is as follows:

- 23.11** Bulletins shall show location, title, rate of pay, hours of service, regular assigned rest days, nature of duties and, if temporary, the approximate duration.

In these circumstances I am satisfied that the Company was entitled to treat the position vacated by Ms. Lee under the expectation of impending abolishment as a temporary position within the meaning of Article 23.11. In the result Mr. Dwyer cannot be said to have been adversely affected by displacement from a permanent position within the meaning of Article 8 of the Job Security Agreement.

For these reasons the claims filed on his behalf, as well as on behalf of grievors Davis and Brauweiller must be dismissed

June 16, 1988

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**