

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1909

Heard at Montreal, Wednesday, 12 April 1989

Concerning

### CANADIAN PACIFIC LIMITED

And

### TRANSPORTATION COMMUNICATIONS UNION

#### **DISPUTE:**

The payment of an incumbency differential to Mr. S. Hill of Freight Claims, Calgary.

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

Mr. S. Hill was employed as Senior Clerk in the Freight Claims Office in Calgary.

Mr. S. Hill was demoted from his position of Senior Clerk as a result of an investigation held by the Company into his work performance. A grievance with respect to the demotion was dismissed at arbitration in CROA Award 1764.

The Union submitted that Mr. S. Hill was entitled to a Maintenance of Basic Rate as he was displaced by the Company due to technological, operational or organizational changes on the Senior Clerk's position.

The Company declined the claim for an incumbency.

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

**(SGD) D. DEVEAU**  
GENERAL CHAIRMAN

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

**(SGD) K. PORTER**  
ASSISTANT COMPTROLLER, REVENUES & CLAIMS

There appeared on behalf of the Company:

P. C. Delaney – Personnel Manager, Accounting, Montreal  
K. J. McCaw – Area Supervisor, Freight Claims Recoveries and Inspections, Calgary  
P. Timpson – Labour Relations Officer, Montreal

And on behalf of the Union:

D. Deveau – General Chairman, Calgary  
D. Kent – Vice-General Chairman, Vancouver

## **AWARD OF THE ARBITRATOR**

The material establishes that the position previously held by Mr. Hill as OS&D Clerk at Winnipeg was abolished effective December 31, 1984, to be replaced by the newly established position of Senior Clerk. At the same time an identical position of Senior Clerk was established at Calgary. The grievor was awarded the bulletined position of Senior Clerk at Winnipeg on November 29, 1984. Almost contemporaneously, on December 3, 1984 Mr. Hill bid on the newly established Senior Clerk's position in Calgary. It was awarded to him on December 7, 1984. Subsequently he was found to be unable to perform the duties and responsibilities of that position, largely because of his difficulty with the newly implemented computer system that was integral to the reorganization of the Company's Freight Claims offices.

The Article 8 notice specifically drew to the attention of employees the possibility of claiming vacant positions at other locations, with relocation under such arrangements to be made under the terms of Article 7 of the Job Security Agreement. It is common ground that the grievor's expenses of relocation to Calgary were paid for by the Company pursuant to the terms of the Job Security Agreement. Mr. Hill held the position of Senior Clerk at Winnipeg for a matter of days only. In the Arbitrator's view it would have been natural for him to first apply for the Winnipeg position to consolidate his job security at that location, while proceeding with his application for the Calgary vacancy. In my view what transpired was a single move by Mr. Hill, within a matter of days, from the position of OS&D Clerk at Winnipeg to that of Chief Clerk at Calgary, all within the contemplation of the Article 8 notice which issued on September 25, 1984.

It does not appear disputed that if Mr. Hill had remained as Chief Clerk at Winnipeg and had encountered an inability to adjust to the reorganization, in consequence of which he would have been required to take a lower paid position, he could have invoked the protections of incumbency provided for in the Job Security Agreement. In the Arbitrator's view he is no less protected by virtue of the fact that, as part of the same reorganization, he elected to relocate to Calgary. For the reasons related in **CROA 1764**, the reorganized system of administration implemented within the freight claims offices, including greater reliability on computerized records, proved to be beyond his capabilities. That is precisely the kind of circumstance for which protection is contemplated within the terms of the Job Security Agreement.

For the foregoing reasons the grievance must be allowed. Mr. Hill shall be paid his incumbency rate as claimed, save that it shall be payable only prospectively, calculated from the date at which this grievance filed. The Arbitrator remains seized.

April 14, 1989

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