CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1930

Heard at Montreal, Wednesday, 12 July 1989

Concerning

CANADIAN PACIFIC LIMITED

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. J.T. Hart, Welder Foreman, was laid-off from this position on November 14, 1986. He applied for weekly lay-off benefits as provided in Article 5, of the Job Security Agreement. The Company denied payment of benefits claiming he is a seasonal employee.

JOINT STATEMENT OF ISSUE:

The Union contends that: **1.)** Mr. J.T. Hart is entitled to benefits after lay-off as Welder Foreman on November 14, 1986 as provided in Article 5 of the Job Security Agreement. **2.)** Article 10.1 of the Job Security Agreement does not apply to Mr. Hart when laid-off as Welder Foreman. **3.)** Mr. Hart be paid his entitlement to Job Security benefits from November 14, 1986, and onward.

The Company denies the Union's contention and declines payment.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD) M. L. MCINNES	**(SGD) J. M. WHITE**
SYSTEM FEDERATION GENERAL CHAIRMAN	**GENERAL MANAGER OPERATION & MAINTENENCE HHS**

There appeared on behalf of the Company:

L. J. Guenther	– Assistant Supervisor, Labour Relations, Vancouver
J. D. Huxtable	– Assistant Supervisor, Labour Relations, Vancouver
L. G. Winslow	– Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

M.L. McInnes	– System Federation General Chairman, Vancouver
G. Kennedy	– General Chairman, Vancouver

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that for a substantial number of years persons who were laid off at the conclusion of their seasonal employment in the position of welder foreman were deemed to revert to their seniority status as extra gang labourers. Such employees had been treated as not entitled to weekly layoff benefits as provided in Article 5 of the Job Security Agreement.

The thrust of the Brotherhood's case is that no recognized seasonal working periods have been defined in respect of any employees other than extra gang labourers. It argues that since Mr. Hart was laid off as a welder foreman, and no seasonal working periods had been established for that classification of employee, he is a not a seasonal employee caught by the exception established within Article 10 of the Job Security Agreement. That article provides that Articles 5 and 8 of the agreement

> ... shall apply to (seasonal employees) except that payment may not be claimed by any seasonal employee during or in respect of any period or part of a period of layoff falling within the recognized seasonal layoff period for such group ...

Article 10.1 provides in part,

> Seasonal employees and recognized seasonal working periods shall be as defined in Memoranda of Agreement signed between the Company and the affected Organizations signatory thereto.

The Brotherhood asserts that as no specific memoranda have ever been signed with respect to the establishment of seasonal working periods for employees other than extra gang labourers, Mr. Hart has never effectively been carved out of the general protections of Articles 5 and 8 and the Job Security Agreement as contemplated by Article 10.

But for the long-standing past practice of the Company, apparently

unobjected to by the Brotherhood over many years, by which it treated seasonal employees other than extra gang labourers as reverting to extra gang labourer status if they do not claim permanent employment at the conclusion of their seasonal employment, thereby bringing them within the exception described in Article 10 of the Job Security Agreement, the Brotherhood's argument might have some appeal. As is well established in the prior decisions of this Office, when a given interpretation of a collective agreement has been knowingly applied between the parties, without objection or grievance over a substantial number of years, spanning the renegotiation and renewal of the Collective Agreement in unchanged terms, the parties are taken to accept the established interpretation as part of their agreement, and the union which has acquiesced in the interpretation so applied cannot assert some different interpretation by means of a grievance. By the renewal of the Collective Agreement without change, in the knowledge of the interpretation applied to Article 10 of the Job Security Agreement by the Company over many years, the parties have effectively agreed that interpretation into the terms of their collective agreement. Any change with respect to the established interpretation is a matter to be resolved in bargaining.

For the foregoing reasons the grievance must be dismissed.

July 14, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR