CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2150

Heard at Montreal, Thursday, 16 May 1991

concerning

CANADIAN PACIFIC LIMITED

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

A claim that Mr. A. Recek should have been called to work on July 8, 9, 10, 17, 18 and 25, 1990.

JOINT STATEMENT OF ISSUE:

Due to the absence of the regular incumbent, the Company required a Security Guard for a vacancy on July 8, 9, 10, 17, 18 and 25, 1990. Mr. S. May, an employee on employment security was assigned the temporary work.

Mr. Recek has greater seniority than Mr. May on the applicable Security Guard roster.

Mr. Recek was on laid off status at all material times.

The Union contends that the Company is required to call from layoff, an employee with the greater seniority when vacancies are required to be filled.

The Union also contends that the Company is attempting to confer super seniority to employees protected by employment security clauses.

The Union further contends that, by not calling the employee with the greater seniority, the Company violated Articles 4.02, 5.04 and 5.05 of Collective Agreement No. I.D.4.

The Company denies the Union's contentions.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) J. MANCHIP	(SGD.) R. K. LEAVITT
GENERAL CHAIRMAN	CHIEF, DEPARTMENT OF INVESTIGATION

There appeared on behalf of the Company:

D. J. David	– Labour Relations Officer, Montreal
K. James	– Deputy Chief, Investigation Department, Montreal
R. A. Hamilton	– Personnel Manager, Finance & Accounti ng, Montreal

And on behalf of the Union:

J. Manchip	– General Chairman, Montreal
D. J. Bujold	– National Secretary/Treasurer, Ottawa
C. Pinard	– G.S.T., Vice-General Chairman, Montreal
W. Cleveland	– Local Chairman, Montreal
M. Prebinski	– Staff Assistant, Ottawa

AWARD OF THE ARBITRATOR

The Company does not dispute that a permanent vacancy of sixty calendar days or more falling under the terms of Article 4.01 and 4.02 of the collective agreement would have to be bulletined and awarded to the senior qualified applicant in accordance with Article 4.03. It submits that in the instant case, however, the work in question involved a temporary assignment in the nature of vacation relief which, the Employer argues, does not come within the contemplation of Article 4.01. In the instant case Security Guard S. May, who was on employment security status, was assigned to perform the temporary vacation relief work in question on six separate days in July.

In the Arbitrator's view the Company's position is well founded. I am satisfied that Articles 4.02, as well as Articles 5.04 and 5.05 of the collective agreement contemplate the displacement of employees on the basis of seniority in circumstances other than the kind of temporary relief assignments which are here in question.

Firstly, Article 4.02 plainly incorporates within its own terms the provisions of Article 4.01 which specifically refers to vacancies or new positions for a known duration of sixty calendar days or more. Article 5.05 speaks in terms “when forces are increased” employees are to be returned to service in the order of their seniority. That circumstance plainly did not arise in this case. Lastly, Article 5.04 describes the general rights of a security guard who is laid off to displace a junior security guard. The context of that provision, however, contemplates displacement “within five calendar days of the date of notification.” In the Arbitrator's view the mechanism so contemplated does not appear to be intended for short term coverage of a relief position for vacations, illness and the like. That conclusion is further supported by the fact that the heading of Article 5 is “Reduction and Increase in Staff” (see **CROA 2144**). That, plainly, is not the circumstance which arose in the instant case.

I am satisfied, upon a review of the material, that this case falls within the principles described in the following passage from **CROA 2006**:

> . . . I can find no prohibition against the actions of the Company in assigning a make-work project to employees on employment security status. Moreover, while the terms of the Employment Security and Income Maintenance Agreement between the Company and the Brotherhood stipulate the obligation of employees on employment security status to fill available permanent vacancies in certain circumstances, there is nothing in that agreement of which the Arbitrator is aware that would prevent the assignment of temporary or make-work jobs to such employees. On the material before me I can find no basis to conclude that the Company was under an obligation to declare and advertise temporary vacancies in respect of the work in question, and to award it on the basis of the procedures contemplated in Article 12.6 and 12.7 of Agreement 5.1.

For the foregoing reasons the grievance must be dismissed.

May 17, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR