CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2223

Heard at Montreal, Tuesday, 14 January 1992

concerning

CANADIAN PACIFIC LIMITED

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

UNION:

The discontinuance of permitting employees 15 minutes, on pay day, to do banking, i.e. cash cheque, deposit.

COMPANY:

The discontinuance of permitting employees in the Chief Accountant's office in Toronto 15 minutes off, with pay, on pay days, to cash or deposit wage cheques.

EX PARTE STATEMENT OF ISSUE:

UNION:

It has been a long standing practice to permit employees 15 minutes, every pay day, to do banking.

With the implementation of Direct Deposit, which has not been agreed upon by the Union, the Company issued instructions that this practice would no longer be permitted.

The Company further advised, employees would be subject to an investigation, under Article 27, of the Collective Agreement, if they continued to take 15 minutes to do banking.

The Union contends, the Company is estopped from unilaterally cancelling this past practice.

COMPANY:

It has been the practice to permit employees in the Chief Accountant's office in Toronto 15 minutes, with pay, on pay days, to cash or deposit wage cheques.

With the implementation of direct deposit by the Company, the Company issued instructions that this practice would no longer be permitted.

The Union contends that the Company is estopped from unilaterally cancelling this practice.

The Company denies this claim.

FOR THE UNION:

(SGD.) J. MANCHIP
EXECUTIVE VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) W. P. COTNAM
ASSISTANT COMPTROLLER, EXPENSES

There appeared on behalf of the Company:

R. Hamilton	– Personnel Manager, Rail Accounting, Montreal
D. David	– Labour Relations Officer, Montreal
R. J. Martel	– Labour Relations Officer, Montreal

And on behalf of the Union:

J. Manchip	– Executive Vice-President, Montreal
D. J. Bujold	– National Secretary-Treasurer, Ottawa
C. Pinard	– Division Vice-President, Montreal
D. Deveau	– Executive Vice-President, Calgary
P. Conlon	– Local Chairman, Toronto
K. Langlois	– Local Chairman, Montreal

AWARD OF THE ARBITRATOR

The material establishes that in Toronto and Montreal the Company has had a long standing practice of allowing employees fifteen minutes on pay day to do banking. The privilege so accorded, however, is not included in the collective agreement. The material further reveals that the practice of allowing banking time developed over a period of years during which the Company paid all of its employees by cheque.

In the spring of 1991 the Company instituted a system of voluntary direct deposit banking. It is not disputed that now approximately 70% of the employees represented by the Union are paid by direct deposit. On March 20, 1991 the Company terminated the practice of allowing its employees fifteen minutes of banking time on their pay days, because of the implementation of the new direct deposit system.

The Union submits that the Company is estopped from changing its practice and removing the fifteen minute period. With that position the Arbitrator has substantial difficulty. The first element of an estoppel is a representation by one party, whether through words or deeds, that it will not enforce the strict terms of its contract or collective agreement. Can it be said in the instant case that the Company ever made an unqualified representation to the Union that it would not seek to enforce strict adherence to the hours of work and wage provisions of the collective agreement on pay days? I think not.

At most, what can be said is that the Company, through its long standing practice, represented to the Union that so long as wages were generally paid by cheque, banking time would be allowed to employees on pay days. With the advent of the option of direct deposit, employees were no longer required to deposit or cash their cheques, and the very basis of that representation ceased to exist. In the Arbitrator's view the only representation which can fairly be said to have been made by the Company is that banking time would be allowed insofar as the distribution of pay cheques was the general method of payment. Now that the method has preponderantly changed to direct deposit, it cannot be held to the prior practice by the equitable doctrine of estoppel. The Employer's representation through its prior practice simply cannot be said to extend to the circumstances which now obtain. On the facts as disclosed, therefore, the plea of estoppel raised by the Union cannot be sustained.

For the foregoing reasons the grievance must be dismissed.

January 17, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR