

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2316

Heard at Montreal, Wednesday, 13 January 1993

concerning

CANADIAN PACIFIC EXPRESS & TRANSPORT

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

The Union, on behalf of Mr. Steven Takacs, grieves that he has not been paid the Life Insurance to which his estate/beneficiary is entitled.

UNION'S STATEMENT OF ISSUE:

Mr. Takacs was an employee of the Company who was killed while on duty.

During the period of his employment, he paid life insurance premiums and upon his death a claim was made for the life insurance benefit. The benefit was denied on the basis that Mr. Takacs was not a full-time employee.

The Union asserts he is entitled to the benefit or in the alternative, the Company is estopped from asserting otherwise as the premium payments were accepted.

The Union seeks full compensation and relies upon Article 31 of the Collective Agreement.

FOR THE UNION:

(SGD.) J. CRABB

EXECUTIVE VICE-PRESIDENT

There appeared on behalf of the Company:

M. D. Failes	– Counsel, Toronto
B. F. Weinert	– Director, Labour Relations, Toronto
L. Shank	– Benefits Coordinator, Toronto
C. Ryan	– Operations Supervisor, Belleville

And on behalf of the Union:

H. Caley	– Counsel, Toronto
J. Crabb	– Executive Vice-President, Toronto
J. Marr	– Vice-President, Saint John

AWARD OF THE ARBITRATOR

The facts material to the dispute are agreed. The employee whose estate brings this claim, Mr. Steven Takacs, commenced employment with the Company on July 18, 1988 working firstly part-time as a warehouseman and

thereafter, to the end of his employment, part-time as a driver. He died on July 28, 1991 of injuries suffered in an accident which occurred while he was driving a tractor trailer, in the service of the Company.

Life insurance is provided for under article 31.9 of the collective agreement. That article reads as follows:

31.9 (a) The Group Life Insurance coverage will be \$15,000.00 for employees who have compensated service with the Company on or subsequent to May 1, 1982, if otherwise qualified under the provisions of the Benefit Plan. On the same basis, a double indemnity provisions on a "24-hour basis" for accidental death will be in effect.

Effective January 1, 1989, the Group Life Insurance coverage will be increased to \$20,000.00. The premiums will be Company paid. In addition, each employee will be entitled to purchase an additional \$20,000.00 of insurance at his or her expense.

(b) Effective October 1, 1979, the present provisions relating to continuation of life insurance of any employee who becomes totally disabled provides that such employee will receive life insurance coverage equal to the amount of paid up retirement insurance in effect at that time.

[emphasis added]

For the purposes of this grievance, it is common ground that the foregoing provision may be interpreted as a direct obligation upon the Company to provide the insurance described. Secondly, it is not disputed that as a part-time employee Mr. Takacs was not in fact eligible for either the basic life insurance coverage of \$20,000.00 or the additional \$20,000.00 in coverage which eligible employees were entitled to purchase at their own expense.

The evidence discloses, however, that Mr. Takacs did, in fact, become enrolled in the optional plan for the additional \$20,000.00 of life insurance. A notice was posted in the grievor's terminal advising employees of the life insurance protections which were then newly available to them. Although no date appears on it, the notice seems to have been posted in late 1988 or early 1989. It reads, in part, as follows:

IMPORTANT NOTICE

TO:

ALL ELIGIBLE EMPLOYEES COVERED BY THE CP EXPRESS & TRANSPORT COLLECTIVE AGREEMENT CURRENTLY IN FORCE:

Effective January 1, 1989, your Basic Life Insurance Coverage was increased from \$15,000.00 to \$20,000.00 at no cost to you.

In addition, you may apply to purchase, at your own expense, an additional \$20,000.00 of Life Insurance Coverage. The following chart indicates your cost according to the age category that you fall under:

...

Mr. Takacs filled out and returned an enrollment card which was processed, among several hundred others, by the Company.

It appears that the administrative process utilized by the Company, and the computer data base employed, was not designed in such a way as to check the eligibility of employees seeking to purchase the additional \$20,000.00 of life insurance at their own expense. Nor is it clear, on the evidence before the Arbitrator, whether the Company had clearly adverted to whether a part-time employee in the position of Mr. Takacs was in fact not eligible for the optional benefit. The evidence discloses that Mr. Takacs' enrolment application was processed, without incident or objection. Accordingly, from the time of his application forward, life insurance premiums were deducted at source from Mr. Takacs' wages, and the deductions were specifically noted on the coded portion of his pay stub with the designation "LIFE INS". In the result, premiums were deducted, paid for by the deceased, and forwarded to the SunLife Company by the employer for approximately two and one-half years, until the time of his death. Following his fatal accident the Company's benefits coordinator, Ms. Linda Shank, wrote the following letter to the grievor's father:

Please accept my sincere condolences on the tragic death of your Son. With respect to the untimely death of your Son, Steven Takacs, our records indicate that he had elected Optional Life Insurance in the amount of \$20,000.00. Unfortunately, basic life insurance and accidental death benefits are not applicable as your Son's classification was part time without benefits.

Enclosed is Sun Life's "Election of Method of Settlement & Statement of Claim" form as application for optional life insurance benefits.

Please return the completed form, along with an Original or notarized copy of Death Certificate, and an original or notarized copy of the deceased's birth certificate.

Please return the completed forms and requested documents at your earliest convenience. Upon receipt, I will submit to Sun Life on your behalf.

When the claim form was filled out and returned to the Company it was duly submitted to SunLife of Canada by Ms. Shank in a letter dated February 3, 1992. On March 3, 1992 the insurance company responded to Ms. Shank advising that the deceased was not covered under the group policy, which defines an employee as "a person employed by the employer who is a full-time bargaining unit employee as defined in the collective agreement, excluding anyone who is a casual or temporary employee." On March 12, 1992 Ms. Shank wrote to the grievor's father as follows:

It is with deep regret that I am writing to advise you that Sun Life have declined our claim for Optional Life Insurance benefits based on the terms of our policy with Sun Life.

The contract defines an "employee" as "a person employed by the Employer who is a full-time bargaining unit employee as defined in the collective agreement, excluding anyone who is a casual or temporary employee." In order to be eligible for benefits under the Sun Life contract, an employee must meet this criteria.

Unfortunately, through an administrative oversight, your Son was enrolled in the Optional Life Insurance Plan when this additional coverage was first introduced, even though he was not eligible to join the plan as he was classified as part time only and not on the Seniority Listing of the Union. The enclosed cheque is a refund of the 30 months premiums which were paid.

Please accept our apologies for any inconvenience this misunderstanding has caused your family to experience at this difficult time.

The Union claims that the Company is estopped from denying the insurance claim made on behalf of Mr. Takacs' estate. It submits that the fact that his application was accepted and processed without exception or objection, and that premiums were subsequently deducted from his wages for some thirty months before his death constitute an effective representation by the employer that he was at all times covered by the insurance protections which he had elected. It submits that for the Company to now deny his entitlement to protection is clearly prejudicial to his rights and to the rights of his estate. Counsel for the Union further points to the conduct of the Company after the grievor's death as being consistent with a representation having been made earlier on its part with respect to Mr. Takacs' eligibility. Firstly, he notes the letter sent to Mr. Takacs' father on September 27, 1991, initially expressing the view that the estate was entitled to make a claim in respect of the elective optional life insurance plan, although there was no entitlement under the basic plan. Further, he points to the fact that the form returned by the estate to the Company's Benefits Coordinator was duly processed and forwarded to the life insurance company without any indication on the employer's part that it was not an appropriate claim.

Counsel for the Company submits that the evidence discloses a mistake, and not a deliberate representation on the part of the Company as to Mr. Takacs' entitlement to participate in the life insurance plan. On that basis, he submits that an estoppel cannot be established. He further stresses that the mistake was in fact initiated by Mr. Takacs himself, to the extent that the deceased employee endeavoured to enrol himself in an insurance plan which he knew, or reasonably should have known, did not apply to him.

Upon a careful review of the evidence the Arbitrator has some difficulty with the merits of the position advanced by the Company. Firstly, although the parties are agreed that the additional life insurance of \$20,000.00 provided for under article 31.9(a) does not extend to part-time employees, it is, at a minimum, arguable that the elective plan could, on the language of that provision, be interpreted as extending to all employees. The language of the provision

makes it clear that the Company paid basic group life insurance is restricted to employees "... qualified under the provisions of Benefit Plan." That would clearly exclude the grievor. The provision goes on, however, to state that "each employee" may purchase additional insurance at the individual's own expense. While the parties may well have understood that that option was not to be available to a part-time employee, a person in the position of Mr. Takacs can be forgiven for having drawn a contrary conclusion.

His misunderstanding, arguably shared by some within the Company's management, is also understandable in the face of the notice posted to the attention of employees with respect to their insurance options in early 1989. Clearly, that notice made no attempt to define or clarify which employees were entitled to the benefits described, and was addressed simply to "all eligible employees covered by the CP Express & Transport collective agreement currently in force". In the result, even though the deceased may have been mistaken, it was not altogether unreasonable for him to form the opinion that he was entitled to elect the additional \$20,000.00 in life insurance, which he would pay at his own expense. Plainly the processing of his application, and the subsequent deduction of premiums at source, as noted on some thirty pay stubs, would have done nothing to disabuse him of that view.

The purchase of life insurance is an important part of any individual's personal financial plan. In the case at hand it is not unreasonable to assume that Mr. Takacs may well have decided not to pursue other private life insurance options on his own, in the belief that he was well protected by the plan which he was paying for through his employer. In the circumstances, given the importance of the reliance of an employee in the position of the deceased, there is, I think, a commensurate obligation on the part of a company providing life insurance protections to deal with the employees affected by its actions in clear and careful terms.

In the instant case the Arbitrator has some difficulty with the argument of Counsel for the Company that an estoppel can be grounded only on a deliberate or calculated representation by one party to an agreement, and cannot succeed where there has merely been a mistake. In this regard Counsel refers the Arbitrator to **Re Monarch Fine Foods Company Ltd. and Milk and Bread Drivers, Local 647** 1985 18 L.A.C. (3d) 257 (Schiff) and **Re Northwest Territories and Union of Northern Workers** 1989 5 L.A.C. (4d) 1 (Chertkow).

In my view to assert, in defence of the claim, that the Company simply made an error does not fully speak to the equities of the case at hand. In the wording of the collective agreement provision, combined with the notice issued by the Company to all employees with respect to the available additional life insurance, whether by mistake or by design, the employer made a representation which a person in the position of Mr. Takacs could reasonably interpret as an indication that he was entitled to apply for the optional additional life insurance. Further, when he forwarded his application, no contrary indication was forthcoming. On the contrary, the employer proceeded to deduct his premiums at source, and to forward them to the insurer in a manner fully consistent with the employee's understanding of the Company's communication. For the reasons touched upon above, it can scarcely be suggested that the totality of the Company's actions did not amount to a holding out which could be expected to induce a degree of reliance in an employee, at least to the extent of causing him or her not to seek life insurance in the same amount elsewhere. In the case of Mr. Takacs, the failure of that reliance is plainly prejudicial, to the extent that it cannot be redressed after his death.

In the Arbitrator's view the elements of estoppel are established. By its notice to employees, and by the fact that it received and processed the grievor's application for optional insurance, and deducted premiums from his wages for some thirty months prior to his death, the employer must be taken to have represented to him, as it did later to his father, that he was eligible and was at all time covered by the plan. Even if that representation proceeded from an error on the Company's part, it would be inequitable, in my view, to allow the employer to raise laxity or error on its own part as a defence to the claim.

For the foregoing reasons the grievance must be allowed. The Arbitrator directs that the sum of \$20,000.00 be paid forthwith to the estate of Mr. Steven Takacs, with interest, as requested.

January 15, 1993

(Sgd.) MICHEL G. PICHER
ARBITRATOR