

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2525

Heard in Montreal, Wednesday, 14 September 1994

concerning

CANADIAN PACIFIC EXPRESS & TRANSPORT

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

The placement of non-bargaining unit employee in the Quebec terminal to perform bargaining unit work.

UNION'S STATEMENT OF ISSUE:

The Company hired Mr. Marc Champagne as a non-scheduled employee. His work consists, in part, in the sortation and distribution of bills to the drivers of designated routes. This work was previously done by bargaining unit employees.

The Union requested the positions be bulletined and/or the work be done by a bargaining unit employee.

The Company denied the Union's request.

FOR THE UNION:

(SGD.) D. J. DUNSTER
EXECUTIVE VICE-PRESIDENT

There appeared on behalf of the Company:

M. D. Failes	– Counsel, Toronto
B. F. Weinert	– Director, Labour Relations, Toronto
R. Haggerty	– Director, P&D, Operations, Toronto
W. Morissette	– Area Terminal Manager, Quebec City

And on behalf of the Union:

D. Wray	– Counsel, Toronto
A. Dubois	– Division Vice-President, Quebec
R. Nadon	– Local Protective Chairman, Quebec City

AWARD OF THE ARBITRATOR

The issue to be resolved is whether Mr. Marc Champagne is an employee within the bargaining unit. The Union alleges that he occupies a newly established clerical position within the contemplation of article 18.1 of the collective agreement, and seeks a direction from the Arbitrator that the Company be required to negotiate the rates for his position within the terms of the collective agreement. The Company maintains that Mr. Champagne holds a management position that does not fall within the bargaining unit.

Upon a review of the evidence, the Arbitrator is satisfied that the Company's position is well founded. The duties and responsibilities exercised by Mr. Champagne are considerably more than merely clerical, as the Union would have it. He is responsible for the operation of a computer system which is instrumental in the distribution of work loads among pickup and delivery routes. The system, known as Routronics, introduced to the Quebec City Terminal in January of 1994, involves the receipt of waybill information by computer during the course of an overnight tour of duty by Mr. Champagne. Among other things, he utilizes the information gained through the computer to make decisions with respect to balancing of freight and the distribution of pick up and delivery work to the Company's drivers for the following day. The material before the Arbitrator establishes that he is instrumental in decisions with respect to the structuring of freight loads, the elimination or partial elimination of routes on a given day and the calling in of additional employees to handle high volumes of freight. While it is evident that Mr. Champagne works in conjunction with the terminal's supervisors in making decisions about the utilization of manpower, he does exercise meaningful input into those decisions, and a degree of discretion in the structuring of work assignments which impacts the employment of bargaining unit members. To that extent he is, I am satisfied, a person exercising decision making power which is managerial in nature, and which would arguably place him in a conflict of interest should he be included within the bargaining unit.

The fact that Mr. Champagnes controls work loads and monitors productivity through the operation of a computer system, and that he is not directly involved in giving orders to employees or hiring, firing or discipline, does not derogate from the fundamentally managerial nature of the decisions which he is compelled to make in relation to work planning and productivity. I am therefore satisfied that his position is not a newly established position within the bargaining unit for the purposes of article 18.1 of the collective agreement. It may further be noted that many of the duties and responsibilities exercised by Mr. Champagne have already been determined by the **Canada Labour Relations Board**, in a decision dated July 14, 1989, to fall outside the scope of the bargaining unit. For the foregoing reasons the grievance must be dismissed.

16 September 1994

(signed) MICHEL G. PICHER
ARBITRATOR