

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2538

Heard in Montreal, Tuesday, 8 November 1994

concerning

CANADIAN PACIFIC EXPRESS & TRANSPORT

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

Claim by CPET employee C. Touchette, Obico Terminal, for differences in wages earned as a city P&D driver and what he was earning as a spareboard linehaul driver. Also, a maintenance of basic rate (MBR) should have been established and a mileage-rated linehaul spareboard position bulletined.

UNION'S STATEMENT OF ISSUE:

Employee C. Touchette was bumped from his spareboard linehaul position by senior employee J. Vaughan.

Employee Touchette exercised his seniority by bumping onto a city P&D position, as there were no junior employees to him holding a mileage-rated linehaul position.

The Union asserts the Company has continuously used outside carriers to pull their trailers to and from the Obico Terminal

The Union, through the grievance procedures, requested a mileage-rated linehaul spareboard position be bulletined, and claimed on behalf of employee Touchette the difference in wages he is earning as a city P&D driver and what he was earning as a mileage-rated linehaul spareboard driver (\$400.00 per week difference) and that he receive an MBR.

The Company refused to bulletin a mileage-rated linehaul spareboard position and declined to pay the difference in wages and, further, declined to have an MBR established.

FOR THE UNION:

(SGD.) G. RENDELL

for: EXECUTIVE VICE-PRESIDENT

There appeared on behalf of the Company:

B. F. Weinert – Director, Labour Relations, Toronto
P. D. Macleod – Director, Linehaul/Safety, CanPar, Toronto

And on behalf of the Union:

D. Dunster – Executive Vice-President, Trucking, Ottawa

AWARD OF THE ARBITRATOR

The grievance turns on the merits of the Union's allegation that grievor Claude Touchette was displaced from his position as a linehaul driver by reason of the Company's decision to contract out linehaul work to independent brokers. The Union submits that the Company's actions were in violation of the collective agreement provision governing contracting out which applied at the time, and reads as follows:

SUBCONTRACTING

The Company and the Union acknowledge that the Company has a practice of using both Owner-Operators and Bargaining Unit employees as appropriate in its operations.

While the Company intends to continue its present practice, there is no intent on the part of the Company to establish Owner-Operators in any growth of Company operations where it would be practical and economic to use Bargaining Unit employees.

The Company agrees that there will be no permanent reduction in the present number of Bargaining Unit employees as a result of the use of Owner-Operators or Brokers in any area.

The Company and the Union agree that, in the event of a violation of this understanding, the Union may rely upon any rights it may have under the Collective Agreement.

The foregoing shall have no application to any operations in the Province of Saskatchewan; however, in the Province of Saskatchewan, the Company will not use Owner-Operators to perform work that could be performed by an employee who is in the employ of the Company on the date of ratification and who is laid off and has not had 40 hours of work in that week.

The Union alleges that the Company has violated the prohibition against contracting out, to the extent that Mr. Touchette's opportunity to continue in linehaul service was caused by subcontracting, and asserts that the use of outside contractors amounts to a technological, operational or organizational change which would entitle to grievor to certain protections, including the maintenance of basic rates.

The Arbitrator has some difficulty with the merits of the position advanced by the Union. Firstly, it is well established that the loss of work by reason of a fluctuation of traffic or downturn in business is not an operational or organizational change within the meaning of the parties' Job Security Agreement. That is reflected in an ad hoc arbitration award between these same parties, issued by this arbitrator on November 27, 1992 concerning the reduction of assignments in Port Coquitlam. The evidence in the case at hand discloses that in November of 1991, because of a reduction in the number of trailers to be handled in the terminal yard, the City Shunt position held by Mr. J. Vaughan was abolished. Mr. Vaughan then exercised his seniority to displace Mr. Touchette from his linehaul assignment. In the result, the Arbitrator cannot find that the loss of the linehaul assignment by Mr. Touchette was occasioned by an operational or organizational change. Clearly, it was the result of a reduction in work occasioned by a downturn in business. On that basis, there was no violation of the Job Security Agreement as applied to the grievor.

Secondly, the use of brokers by the Company, in circumstances similar to those in the case at hand, has been found by the Arbitrator to be permitted. The language of the subcontracting provision was considered at length by this Office in **CROA 2249**. For reasons related in that award, which need not be reiterated here, the Arbitrator concluded that the language of that provision did not prevent the use of outside carriers to interline its freight. Specifically, it was found that the reference to owner-operators in the subcontracting provision was in reference to owner-operators within the Company's operations. I am satisfied that the same intention must be found with respect to the word "Brokers" as it appears in paragraph 3 of the subcontracting provision. The unchallenged evidence before me is that the Company did, at all material times, have both owner-operators and brokers within its own operations. While the Arbitrator's conclusion with respect to the grievor's displacement being caused by a decline in traffic would dispose of the case, the grievance would also be dismissed on the basis that there was no violation of the then existing subcontracting provisions, as alleged by the Union.

For the foregoing reasons the grievance must be dismissed.

11 November 1994

(signed) MICHEL G. PICHER
ARBITRATOR