

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2812

Heard in Montreal, Wednesday, 15 January 1997

concerning

CP EXPRESS & TRANSPORT

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

The supplying of a paid up life insurance policy to former CPET employees in Saskatchewan who were required to take early retirement on medical grounds.

EX PARTE STATEMENT OF ISSUE:

The Union, on behalf of employees in Saskatchewan, requested the Company provide a paid up life insurance policy for those CPET employees who were placed on early retirement due to a medical condition.

In a letter dated September 14, 1989 from Maureen Savoy (Manager, Pensions and Benefits) to Mrs. P. Gourley (Sun Life) indicated that at least ten (10) employees had "fallen through the cracks" and requested insurance policy be issued.

The Union contends that the Company is obligated to supply a paid up policy to the employees listed within the file.

The Company has denied our claim.

FOR THE UNION:

(SGD.) D. E. GRAHAM
DIVISION VICE-PRESIDENT

There appeared on behalf of the Company:

M. D. Failes – Counsel, Toronto
B. F. Weinert – Director, Employee Relations, InterLink Freight Systems Inc., Toronto

And on behalf of the Union:

H. F. Caley – Counsel, Toronto
D. E. Graham – Division Vice-President, Regina

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that in May of 1980 the Company's predecessor, as well as the predecessor of the Union, then under a different name, became co-signatories and participants in a Sun Life Insurance Company policy, referred to as Policy No. 7030-G, covering a substantial number of railways, including their trucking divisions, as well as a substantial number of unions. The policy was apparently re-written in accordance with a document executed jointly by the co-chairs of the Employee Benefit Plan Administrative Committee, which included the then president of the instant Union. The policy expressly names both the railways and the unions as joint policy holders.

The instant dispute arises in relation to the treatment of employees who were compelled to retire by reason of disability before the age of sixty. The retirees are approximately ten in number, including two individuals who are now deceased. Some of the claimants were placed on disability pensions as early as August of 1978. The record discloses that in March of 1989 Local Chairman D.E. Graham wrote to Union Vice-General Chairman J. Crabb on behalf of the employees in question, who reside in Saskatchewan, indicating that they were "... employees who retired on a medical pension but didn't receive a copy of the paid up life insurance policy." It appears that at that point the Union formed the opinion that as retirees on a disability pension the individuals in question were entitled to a fully paid up Sun Life insurance policy. Correspondence ensued between the Union and the officers of CP Rail, as well as the Company, to clarify the status of the employees in question. In April of 1990 Mr. Crabb received the following letter from the Company's Manager of Pensions and Benefits, indicating her view that the Union's claim was meritorious and that life insurance policies would be provided to the employees in question:

I am pleased to advise that this matter has finally been resolved.

Life Insurance benefits for all employees across the country who retired on a disability pension have been reviewed and a covering letter, along with a life insurance certificate and beneficiary designation form are being prepared for mailing this week.

The patience shown by you and the pensioners in what turned out to be a lengthy project is appreciated.

If you have any further questions or concerns, please feel free to contact me.

Yours truly,
CP Trucks

(signed) Maureen Savoy
Manager, Pensions & Benefits

In fact, however, no paid up life insurance policies or certificates were forthcoming. Several months afterwards, on April 24, 1991, following further inquiries by the Union, the Company's Vice-President, Human Resources, Mr. B.D. Neill, wrote to Mr. Crabb as follows:

I have received the letters you forwarded on this matter. You are no doubt aware that there were 2 insurance policies in effect. The first policy covered employees who retire in accordance with article 34 of the collective agreement. The second policy dealt with employees who retired on disability grounds and did not meet the article 34 requirements.

The names you forwarded are all pensioners who retired under rule 15(c) of the Pension Plan, i.e. disability and as such, the second policy was applicable. This policy was the Basic Life Insurance Plan which stipulated that an employee was entitled to receive insurance coverage while totally disabled and if proof was supplied to the insurance company.

CPET would write to the insurance carrier advising that the individual may be entitled to receive coverage and requesting that the necessary forms be supplied to that person. This occurred in the case of H.A. ABEL (EO4337). I have attached a copy of the letter sent to Sun Life.

This was the end of CPET's involvement. Sun Life dealt with the individual and we were never advised if she/he was entitled to receive coverage. However, I have checked with them and he is

listed as being entitled to a \$3,368 policy. I have requested a new certificate for Mr. Abel and will forward it when received.

The case of the late Mr. G.A. Doke is identical. He retired on medical grounds in October 1978. He was not entitled to insurance on accordance with article 34; however he may have been entitled to continued coverage via Sun Life. We have no records on this and Sun Life advises that there is no application on file. I have received the insured listing supplied by Sun Life and there is no coverage for Mr. Doke. I can only presume he did not respond to the request from Sun Life for medical information or he did not meet the test of "totally disabled" under their policy.

Yours Truly,

(signed) B. D. Neill
Vice-President, Human Resources

It is useful to reproduce the provisions of the collective agreement which deal with the entitlement of retired employees to insurance coverage. Article 34 governs the rights of employees who retire at sixty years of age or over. The version in effect in 1979 reads as follows:

34 LIFE INSURANCE UPON RETIREMENT

34.1 An employee who retires from service of the Company subsequent to January 1st, 1975 will, provided he is sixty years of age or over, and has not less than ten years' cumulative compensated service, be entitled, upon retirement, to a \$2,000.00 life insurance policy, fully paid up by the Company.

Article 31.8(b) makes separate provision for the life insurance protection of employees compelled to retire before the age of sixty by reason of total disability. In the 1979 version it reads as follows:

31.8 (b) Effective October 1, 1979, the present provisions relating to continuation of life insurance for 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.

Finally, the insurance plan held jointly by the companies and unions makes the following provision, in part:

EXTENDED INSURANCE ON DISABILITY

Upon receipt of written proof satisfactory to the Company that any employee, while insured hereunder and prior to his sixtieth birthday, became totally disabled by bodily injury or disease so as to be wholly prevented thereby from performing any work for compensation or profit or from following any gainful occupation (such totally disable condition being hereinafter called total disability), such employee's insurance will be extended, without payment of premiums, during the continuance of such total disability from the last day of the month during which such employee ceases active work with an Employing Railway due to such total disability until 12 months from such day or until prior receipt of proof if the continuance of such total disability as required below.

The policy then goes on to provide for yearly renewals of the premium waiver during the continuation of total disability.

The first position argued by Counsel for the Union is that the letter of Ms. Savoy is determinative for the purposes of this grievance. He argues that on the strength of her letter the Union's representative communicated with the retirees in question, advising them that paid up insurance policies would be forthcoming. Counsel for the Company counters that Ms. Savoy's letter was, very simply, a serious error on her part, and that it is obviously not in keeping with the rights of the parties as reflected in the collective agreement and the insurance policy itself.

On this issue the Arbitrator is compelled to accept the position of the Company. At best the letter from Ms. Savoy is an erroneous interpretation of the entitlement of the employees in question. There is no evidence before the Arbitrator that any employee was induced to change his or her circumstances or act in detrimental reliance on the letter drafted by Ms. Savoy. Nor can her letter be viewed as a statement in settlement of a grievance, as in fact no grievance was filed or outstanding at the time it was written. In the result, the Arbitrator cannot find that the Union can rest its case on the gratuitous and erroneous opinion of a Company administrator. That is particularly so where,

as in this case, the issue in dispute involved the interpretation and application of an insurance plan of which the Union itself was a joint policy holder.

It is equally clear to the Arbitrator that the documents in question do not, as the Union submits, entitle the retirees who are the subject of this grievance to a fully paid up life insurance policy. They are, as is evident from article 31.8(b) of the collective agreement, entitled to the waiver of their life insurance premiums, provided they are totally disabled within the meaning of the insurance policy. In this regard I am satisfied that the phrase "the present provisions relating to continuation of life insurance for any employee who becomes totally disabled" appearing in article 31.8(b) refers specifically to the provisions of the insurance policy which are reproduced above.

I am, however, satisfied that the grievance must be allowed, in part. It is not disputed that the normal procedure, upon retirement, is for the Company to advise the insurer to provide the necessary forms to the retiring employee, including such forms as might be required for a totally disabled employee to make application for the waiver of premiums. It is not disputed that that was not done for the retirees who are the subject of this grievance. In the result, the employees in question were deprived of the opportunity to apply for the premium waiver, presuming that they qualified at the time of their retirement, and continued to qualify to the date of the grievance. Indeed, the Company does not fundamentally dispute that the employees in question should have that minimum opportunity.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator finds that the failure of the Company to properly notify the insurer of the disability retirement of the grievors deprived them of the opportunity of availing themselves of the protection of article 31.8(b) of the collective agreement. The Company is therefore directed to allow each of the grievors, or his estate, the opportunity to now make such applications, retroactively, with every reasonable opportunity to establish their entitlement. If it can be shown, in the case of any particular grievor or deceased employee, that the Company's actions effectively prevented the individual or his estate from obtaining proof of disability, by the passage of time, the issue of compensation for any resulting loss may be spoken to. On the foregoing basis this matter is referred back to the parties.

January 20, 1997

(signed) MICHEL G. PICHER
ARBITRATOR