

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2914

Heard in Calgary, Thursday, 13 November 1997

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

DISPUTE:

Grievance of Conductor G.J. Hames, Lethbridge, Alberta.

JOINT STATEMENT OF ISSUE:

On May 2, 1996, Conductor Hames applied in writing to the Company for a bridging opportunity pursuant to Article 9A(5) Section B of the collective agreement.

The Union has requested that the bridging opportunity be allowed and the Company has declined to accede to the Union's request throughout the grievance procedure.

FOR THE COUNCIL:

(SGD.) J. KNOWLES
FOR: GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) K. E. WEBB
FOR: DISTRICT GENERAL MANAGER

There appeared on behalf of the Company:

R. V. Hampel	– Labour Relations Officer, Calgary
G. S. Seeney	– Manager, Labour Relations, Calgary
K. E. Webb	– Manager, Labour Relations, Calgary
R. M. Smith	– Labour Relations Officer, Calgary
B. P. Scott	– Labour Relations Officer, Calgary

And on behalf of the Council:

M. Church	– Legal Counsel, Toronto
L. O. Schillaci	– General Chairperson, Calgary
B. L. McLafferty	– Vice-General Chairperson, Moose Jaw
J. K. Jeffries	– Vice-General Chairperson, Cranbrook
J. Knowles	– Vice-General Chairperson, Calgary
E. DeCredico	– Vice-General Chairperson, Nanaimo
D. H. Finsson	– Secretary, Saskatoon

AWARD OF THE ARBITRATOR

Appendix B-52 of the collective agreement deals, in part, with the implementation of conductor-only freight operations and the availability of attrition opportunities. That document, in the form of a letter dated August 31, 1992 states, in part, as follows:

Likewise, the estimate of required attrition can be significantly affected by a number of factors, such as changes to traffic levels and the number of employees electing to accept bridging or severance rather than early retirement.

When the foregoing passage is interpreted in conjunction with the language of article 9A(5) of section B of the collective agreement, the Arbitrator is compelled to agree with the Company that the language of article 9A does not, on its face, or implicitly, give to an employee in the position of Conductor Hames an unqualified right to claim a bridging opportunity merely by reason of the fact that there may a surplus of employees at the terminal where he is employed, at a particular point in time. Additionally, as noted by the Company's representatives, there are alternative means available to the employer to deal with the problem of a surplus, including the possibility of forcing protected employees to adjacent terminals under the terms of article 9A(3)(d)(e) of the collective agreement.

In the Arbitrator's view if the parties had intended that employees should be able to invoke an absolute right to claim a bridging opportunity, they would have done so in clear and unequivocal terms, with little or no room or doubt as to the objective circumstances which would trigger such a significant right. Absent any such clear language, the Arbitrator is compelled to support the interpretation advance by the Company.

For the foregoing reasons the grievance must be dismissed.

November 25, 1997

(signed) MICHEL G. PICHER
ARBITRATOR