CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 271

Heard at Montreal, Tuesday, April 13th, 1971

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (CP TRANSPORT)

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

DISPUTE:

Concerning the interpretation of Article VII of the Master Agreement of March 14, 1967.

JOINT STATEMENT OF ISSUE:

In October, 1967 messenger service on Trains Nos. 1 and 2 between Fort William and Vancouver was discontinued.

The Union contends that the provisions of Clause 1 (a) and (b) of Article VII of the Master Agreement of March 14, 1967 should have applied.

The Company contends that the provisions of Clauses 1 to 4 inclusive of said Article VII did not apply.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) L. M. PETERSON	(SGD.) C. C. BAKER
GENERAL CHAIRMAN	DIRECTOR, PERSONNEL AND INDUSTRIAL RELATIONS

There appeared on behalf of the Company:

C. C. Baker	– Director, Personnel & Industrial Relations, Vancouver
D. Cardi	– Labour Relations Officer, Montreal

And on behalf of the Brotherhood.

L. M. Peterson	– General Chairman, Don Mills
W. C. Y. McGregor	– International Vice President, Montreal
F. C. Sowery	– Vice-General Chairman, Montreal
G. Moore	– Vice-General Chairman, Toronto

AWARD OF THE ARBITRATOR

The material provisions of Article VII of the Master Agreement of March 14, 1967, are as follows.

1. It is agreed between the parties that on the introduction by the Company of technological, operational and/or organizational changes the following provisions will apply:

(a) the Company will not put into effect any such change which is likely to be of a permanent nature and which may effect a material change in working conditions with adverse effects on employees covered by this agreement without giving as much advance notice as possible of any such proposed change to the unions concerned and, in any event, not less than 90 days if a relocation of employees is involved and 60 days' notice in other cases, with a full description thereof and with appropriate details as to the consequent changes in working conditions and the number of employees who would be adversely affected;

(b) that it will negotiate with the Unions measures to minimize the adverse effects of the proposed change on employees, which measures may, for example, be with respect to severance, loss of wages, expenses of moving and travelling of employees required to relocate, retraining and the merging of seniority lists within organizations and/or such other measures as may be appropriate in the circumstances.

5. These provisions do not cover cases where:

(a) workers are affected by a recognizable general decline in business activity, such as a recession or by fluctuations in traffic;

(b) the workers affected are casual workers subject to irregular employment because of the nature of the work they perform or seasonal employees outside their normal period of employment;

(c) there is a normal reassignment arising out of the nature of the work in which the employees are engaged.

The issue in this case is whether the discontinuance of Messenger Service on Trains 1 and 2 constituted a "technological, operational and/or organizational change" within the meaning of Article VII, so as to call for the giving of notice to the union under its provisions.

Article VII is, in the respects material to this case, similar in its effect to the provision considered in **Case No. 228**, and the cases there referred to. As was said there, the abolition of a position is in a narrow sense a change of "operations", but such a change is not necessarily an "operational" change of the sort referred to in Clause 1 of Article VII.

In the instant case messenger service on Trains 1 and 2 was discontinued because the principal reason for the provision of such service was the handling of certain currency shipments from the Bank of Canada, and that reason was removed when the Bank of Canada decided not to forward such shipments by rail. Train messengers were involved with other tasks beside those relating to the currency shipments, but the revenue from such shipments was, in the company's view, the main justification for their employment. The other traffic continued to be handled after the currency shipments ceased, but it was no longer handled by train messengers.

I cannot accept the company's argument that the change – that is the discontinuance of messenger service – was not introduced by the company, but rather by the Bank of Canada. Clearly, it was this company which had employed train messengers, and it was this company which decided not to employ them on these trains any longer. Of course it did so because it did not consider it economical to do so, in view of the loss of revenue caused by the withdrawal of the Bank's business. But it was a decision which this company took, whatever the reasons behind it.

It might seem that what was done here, was like what was done in **Case No. 228**, in that it was simply a cancellation of certain work, a reduction in the level of operations. The two cases are not, however, strictly analogous for in that case there was a reduction in the amount of service provided, whereas here there was the elimination of a type of service. In any event **Case No. 228** came clearly within what was the equivalent of Clause 5 of Article VII in that the change which occurred was brought about by fluctuation of traffic. In the instant case, Clause 5(a) (Clauses 5(b) and 5(c) have no application) refers to cases where "workers are affected by a general decline in business activity, such as a recession or by fluctuations in traffic". Here, there was no "general decline in business activity", nor a "fluctuation in traffic" as that phrase is used in the article. There was a stop to a certain sort of business, and accordingly, the company stopped using a certain classification of employee. This does not, in my view, come within Clause 5 of Article VII of the agreement which governs this case.

In my view, the discontinuance of train messenger service on Trains 1 and 2 constituted an "operational and/or organizational" change within the meaning of Clause 1 of Article VII. The case does not come within Clause 5 of the article. Accordingly, it must be concluded that this was a case in which Article VII applied. The grievance is therefore allowed, and it is my award that the proper notice be given.

(signed) J. F. W. WEATHERILL
ARBITRATOR