CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 465

Heard at Montreal, Wednesday, September 11, 1974

Concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claim of Yard Foreman R.J. Hermanson and crew of Dryden, Ontario for one days' pay account given insufficient notice when their yard assignment was abolished on July 26th, due to rotating strike, in Northwestern Ontario by the Associated Non-operating Unions.

JOINT STATEMENT OF ISSUE:

A bulletin was issued at 2205 on July 25th, 1973, to inform the assigned yard crew working at Dryden that their regular 0730 assignment which works Monday through Friday of each week was abolished on July 26th, 1973. Further each individual crew member was personally contacted by telephone between 2205 and 2217 on July 25th and informed of such abolishment of their assignment. The yard crew, consisting of one Foreman and two Helpers, submitted a claim for eight hours pay on July 26th, 1973, account not receiving sufficient notice in accordance with the provisions of Article 3, Clause (b), NOTE, which states:

> NOTE: When an assignment is to be cancelled for a statutory holiday or for a reduction in the number of assignments, regularly assigned Yardmen will receive at least 16 hours' advance notice.

The Company has declined payment of this claim on the grounds that the NOTE to Article 3, Clause (b), applies only when yard assignments are cancelled and that it does not apply when yard assignments are abolished.

The Union contend that the NOTE to Article 3, Clause (b), specifies that when there is a reduction in the number of assignments, regularly assigned Yardmen will receive sixteen hours advance notice and that, by declining payment of the claim in question, the Company has violated this provision.

FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) R. T. O'BRIEN (SGD.) W. J. PRESLEY

GENERAL Chairman GENERAL MANAGER, Operation & Maintenance, PRAIRIE REGION

There appeared on behalf of the Company:

J. A. Sampson – Supervisor, Labour Relations, Winnipeg

F. B. Reynolds – Assistant Supervisor, Labour Relations, Winnipeg

J. Ramage – Special Representative, Labour Relations, Montreal

And on behalf of the Union:

R. T. O'Brien – General Chairman, Calgary

J. H. McLeod – Vice Chairman, Medicine Hat

P. P. Burke – Vice Chairman, Calgary

AWARD OF THE ARBITRATOR

The Company's answer to the grievance is that the assignment in question was not "cancelled" – in which case there would have had to be the required notice – but was, instead "abolished". There are no notice requirements in the case of the abolition of an assignment. In such case, however, employees are generally entitled to exercise seniority rights. There rights were curtailed, for cases such as the instant case, by an agreement made between the parties on July 25, 1973, and which contemplated situations such as that in question here. By that agreement, where assignments are re-established, it is not necessary that they be rebulletined; the employees simply return to their former jobs or, if these are not re-established, may exercise their seniority at that time.

What occurred in the instant case was indeed the "abolition" of assignments within the meaning of the collective agreement, even though one of the usual incidents of "abolition" – the re-bulletining of the positions on their re-establishment – was avoided by the agreement of the parties. What occurred was not a "cancellation" as that term is used in article 3 of the collective agreement; if it had been, there would have been no need for the agreement which the parties made. Cancellation of an assignment means that it does not operate for a particular period, although it continues to exist, and employees have certain rights as a result. Here, the assignments were abolished and, had the strike which gave rise to them continued, it could be that changes in the pattern of business would affect their re-establishment. The agreement with respect to re-bulletining was a matter of convenience to all concerned and was based no doubt on the premise that most employees would return to their old jobs following the strike. It did not have the effect of otherwise altering the character of the abolition of the jobs.

For the foregoing reasons I must conclude that this was not a case of "cancellation" within the meaning of article 3, and that the notice requirement did not apply. Accordingly the grievance must be dismissed.

(signed) J. F. W. WEATHERILL

ARBITRATOR