CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 631

Heard at Montreal, Wednesday, September 14,1977

Concerning

CANADlAN PAClFIC LIMlTED (CP RAIL)

and

BROTHERHOOD OF MAlNTENANCE OF WAY E??LOYEES

DlSPUTE: d

Claim of Carpenters G. Lefebvre, M. Vachon, T. Jarvis and Rough Carpenters G. Lacombe and J. Couchouron for S.U.B. payments from the Job Security Fund following reduction in staff at Angus Shops on February 8, 1977. Claim period for each employee, including waiting perjod, is as follows:

Name	From	TO
G. Lefebvre	Feb. 9/77	Apr. 18/77
M. Vachon	Feb. 9/77	Apr. 5/77
T. Jarvis	Feb. 9/77	Apr. 4/77
G. Lacombe	Feb. 9/77	Apr. 4/77
J. Couchouron	Feb. 9/77	Apr. 18/77

JOINT STATEMFNT OF lSSUE:

The Union contends that upon exhausting their seniority at Angus Shops, the grievors were eligible to receive Job security benefits under the provisions of Article V of the June 29, 1976 Job Security Agreement.

The Company contends that "in order to be eligible for weekly layoff benefits under the Job Security Agreement, these employees would have to exercise their seniority to displace Junior employees on their basic seniority territory as defined in the Job Security Agreement effective March 1, 1976."

FOR THE EMPLOYEES: FOR THE COMPANY:

(Sgd.) A. Passaretti (Sgd.) C. R. Pike

There appeared on behalf of the Company:

J. A. McGuire — Manager, Labour Relations, CP Rail, Montreal
J. E. Cameron — Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

A. Passaretti — System Federation General Chairman, B.M.W.E., Ottawa

L. M. Dimassimo General Chairman, B.M.W.E., Montreal

AWARD OF THE ARBlTRATOR

Article 5.1 of the Job security agreement provides for a "weekly layoff benefit" for eligible employees. The grievors, it appears, would be generally eligible for such benefits, in most respects. Eligibility is, however, subject to an employee's meeting certain requirements, including, particularly, that set out in Article 5.1 (e):

> "He has exercised full seniority rights on his basic territory as provided for in the relevant collective agreement - - - "

There are exceptions to that requirement which are not material to this case.

Appendix "B" sets out a further reference to "Basic seniority territory" as follows:

> "NOTE: "Basic Seniority territory" as referred to in Clause 1, paragraph (e) and Clause 4, paragraph (c) of this Appendix "B", shall be as defined in each of the relative collective agreements and shall be the seniority territories in effect for the various groups under the relative collective agreements, except that the "basic seniority territory" shall be no lesser area than an area of a Region or equivalent thereof. The basic seniority territories as they exist on the date of signing of this Agreement shall not be changed without the mutual consent of the parties."

The issue in the instant case is whether, in order to meet the requirement that they exercise full seniority rights on their basic seniority territory (and thus, in the circumstances here, become entitled to benefits, the grievors were required to exercise such rights beyond the limits of the Angus Shops. The determination of what constitutes the "basic seniority territory" is to be made by having regard to the particular collective agreement involved although the Note above quoted makes it clear that it must be at least "an area of a Region or equivalent thereof".

The collective agreement which applies in this case, and to which reference is to be made in order to determine what is the "basic seniority territory" for the purposes of the Job security agreement, is Wage Agreement 17. That agreement sets out, in Article 13.4 thereof, a definition of "seniority territory'' for each of the railroads bound by the agreement. ln the case of CP Rail, the Company involved in this case, the seniority territory is defined as "Superintendent's Division". This would appear to comply with the requirement that it be "an area of a Region or equivalent thereof", although no issue has been raised as to that.

It appears that the Angus Shops do not in themselves constitute a "Superintendent's Division" within the meaning of Article 13.4 of Wage Agreement No. 17. In fact, the Montreal Terminals would appear to constitute the "basic seniority territory'' of the grievors,

although the whole scope of that territory need not be defined here. The particular question here is whether that territory extends beyond the Angus Shops, and it can only be concluded that it does.

It appears that in many cases the Company has not in fact treated the Angus Shops as forming part of the Montreal Terminals seniority territory: Job vacancies on that territory, for example, have not been bulletined through the territory even although Angus employees would be entitled to bid on them. Further, there appears to be a separate seniority list for Angus employees, whereas, by Article 13.4, it would appear that there should be one list for the territory. These apparent failures to comply with the requirements of the collective agreement, however, do not affect the rights or obligations of the parties or of the employees under other provisions of the agreement, or under the Job security agreement. Nor, it may be said, would they affect the right of employees to insist on compliance: while the Job security agreement requires employees to exercise seniority rights over a certain territory, it must be remembered that the employees do in fact have such rights which, in other circumstances or for other purposes, it may be very much to their advantage to exercise.

In the instant case, due perhaps to the apparently improper application of the collective agreement which has been referred to above, the Company appears to have been rather slow in permitting some of the grievors to attempt to exercise their seniority in respect of certain Jobs. For this delay the Company should be responsible, and appears that payments were made to certain of the grievors on that account. Whether or not the grievors ought to have been awarded any of the jobs that were available is not in issue in this case. What is in issue here is the necessity of exercising full seniority rights throughout the basic seniority territory. The grievors have not exercised their rights in the basic seniority territory involved in this case. Accordingly they have not complied with the requirements of the job security agreement and are not entitled to the payments sought.

The grievance must therefore be dismissed.

J.F.W. WEATHERILL
ARBITRATOR