

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1630

Heard at Montreal, Tuesday, March 10, 1987

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

JOINT STATEMENT OF ISSUE:

The Brotherhood contends the grievors, former Leading Track Maintainers currently holding the position of Trackman, were entitled to maintain their incumbencies when they did not bid on a bulletined temporary vacancy of Assistant Track Maintenance Foreman. The Brotherhood contends an employee does not have to protect a classification in which he does not hold seniority, therefore the grievors are entitled to maintenance of basic rates in accordance with Article 8.9 of the Employment Security and Income Maintenance Plan.

The Company disagreed with the Brotherhood's contention.

JOINT STATEMENT OF FACTS:

Resulting from the July 1985 Track Reorganization, a number of former Leading Track Maintainers could only hold positions of Trackman. Their rates of pay were thus protected under Article 8.9 of the Employment Security and Income Maintenance Plan.

On 20 August 1985, Mr. P. K. McCully was awarded by bulletin a temporary vacancy of Assistant Track Maintenance Foreman. As a result of this award, all former Leading Track Maintainers with Leading Track Maintainer seniority greater than Mr. McCully were advised, pursuant to Article 8.9 of the Plan, that their incumbency was being reduced temporarily.

The Company considers that in accordance with Article 3.4(b) of Collective Agreement 10.8, Leading Track Maintainers are qualified to fill temporary vacancies of Assistant Track Maintenance Foreman. Therefore in accordance with Article 8.9 of the Plan the grievors, in order to maintain their incumbencies, were required to bid on the highest-rated position to which their seniority and qualifications entitled them.

The grievors, former Leading Track Maintainers, were qualified to bid on the temporary vacancy of Assistant Track Maintenance Foreman. Had they bid on the position, it would have then been awarded to the "senior qualified" applicant. The fact that the temporary position of Assistant Track Maintenance Foreman in question was awarded to one of the former Leading Track Maintainers receiving the incumbency is proof that the grievors are "qualified" to hold such a position.

The Brotherhood submitted because the grievors had not established seniority in the classification of Assistant Track Maintenance Foreman in accordance with Article 3.4(c) of Collective Agreement 10.8, they were not required to bid on that temporary vacancy in order to protect their seniority. The grievors would only be required to protect their seniority in the highest classification which they have held, such position being Leading Track Maintainer.

FOR THE BROTHERHOOD:

(SGD.) PAUL A. LEGROS  
System Federation  
General Chairman

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH  
Assistant  
Vice-President  
Labour Relations

There appeared on behalf of the Company:

T.D. Ferens - Manager Labour Relations, Montreal  
J. Dunn - Labour Relations Officer, Montreal  
S. J. Williams - Labour Relations Officer, Montreal

And on behalf of the Union:

J. Roach - General Chairman, Moncton  
P. G. Legros - System Federation General Chairman, Ottawa  
L. Boland - Federation General Chairman, London  
W. Montgomery - General Chairman, Belleville

#### AWARD OF THE ARBITRATOR

At the hearing the Union took the position that the grievors were not required to protect their incumbency rates of pay solely because the bulletined position of Assistant Track Maintenance Foreman was at a location different from where they were employed. The Union appears to be taking a position contrary to that of the Company with respect to the meaning of the word "location" appearing in paragraph (ii) of Article 8,9 of the Employment Security and Income Maintenance Plan. That Article provides, in part, as follows:

##### Maintenance of Basic Rates

8.9 An employee whose rate of pay is reduced by \$2.00 or more per week, by reason of being displaced due to a technological, operational or organizational change, will continue to be paid at the basic weekly or hourly rate applicable to the position permanently held at the time of the change providing that, in the exercise of seniority he;

- (a) first accepts the highest-rated position at his location to which his seniority and qualifications entitle him; or

- (b) if no position is available at his location, he accept the highest-rated position on his basic Seniority Territory to which his seniority and qualifications entitle him.

The maintenance of basic rates, and four-week guarantees if applicable, will continue until:

- (i) the dollar value of the incumbency above the prevailing job rate has been maintained for a period of three years, and thereafter until subsequent general wage increases applied on the basic rate of the position he is holding erase the incumbency differential; or
- (ii) the employee fails to apply for a position, the basic rate of which is higher, by an amount of \$2.00 per week or more than the basic rate of the position which he is presently holding and for which he is qualified at the location where he is employed; or
- (iii) the employee's services are terminated by discharge, resignation, death or retirement.

The Company objects that the Agreed Statement of Issue makes no reference to any dispute concerning the definition of "location" in sub-paragraph (ii) of the foregoing provision. The Arbitrator must agree that the Joint Statment of Issue appears to deal only with the contention of the Union that an employee is not required to protect a classification in which he or she does not hold seniority.

Article 12 of the Rules of Procedure of the Canadian Railway Office of Arbitration provides as follows:

- 12. The decision of the Arbitrator shall be limited to the disputes or questions contained in the joint statement submitted to him by the parties or in the separate statement or statements as the case may be, or, where the applicable collective agreement itself defines and restricts the issues, conditions or questions which may be arbitrated, to such issues, conditions or questions.

The foregoing provision makes it plain that it is not open to this Arbitrator to deal with any matter that is not within the Joint Statement of Issue. For these reasons, the instant grievance cannot be considered, and must be dismissed. That finding, is, of course, without prejudice to the right of the Union to assert its position in respect of the meaning of the word "location" in any appropriate case in the future, provided that that issue is properly progressed through the grievance procedure.

MICHEL G. PICHER  
ARBITRATOR