CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1634

Heard at Montreal, Tuesday, April 14, 1987

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim that the Company violated Article 8.1 of the Employment Security and Income Maintenance Plan (The Plan) dated 18 June 1985 when it abolished 112 Maintenance of Way positions on the Great Lakes Region.

JOINT STATEMENT OF ISSUE:

Effective 14 October 1985, the Company abolished 63 permanent Track positions, 1 permanent Group 3 Work Equipment Operator positions and 27 permanent Bridges and Structures positions. In addition, the Company abolished 13 vacant Track positions, 1 vacant Group 3 Work Equipment Operator position and 7 temporary (seasonal) Track positions on the same date.

The Brotherhood claims that a notice under Article 8.1 of The Plan should have been issued by the Company prior to the positions being abolished.

The Company disagrees with the Brotherhood's contention.

| FOR THE BROTHERHOOD: | FOR THE COMPANY: |
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| (SGD.) PAUL A. LEGROS | (SGD.) D. C. FRALEIGH |
| System Federation | Assistant Vice-President |
| General Chairman | Labour Relations |

There appeared on behalf of the Company:

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| T.D. Ferens | - Manager Labour Relations, Montreal |
| J. Dunn | - System Labour Relations Officer, Montreal |
| M. Matthews | - Manager Public Affairs, Toronto |
| M. Vaillancourt | - Employee Relations Officer, Engineering, Montreal |
| B.F. Bahm | - Regional Engineer, Administration, Toronto |
| S. Delvecchio | - Maintenance Engineer, B & S, Toronto |
| D.R. Dafoe | - Project Officer, Toronto |

And on behalf of the Brotherhood:

L. Boland - Federation General Chairman, London
P. Legros - System Federation General Chairman, Ottawa
R.Y. Gaudreau - Vice-President, Ottawa
D.W. Montgomery - General Chairman, Belleville

AWARD OF THE ARBITRATOR

The merits of this grievance are governed by the provisions of Article 8 of the Employee Security and Income Maintenance Plan. it provides, in part, as follows:

> 8.1 The Company will not put into effect any technological, operational or organizational change of a permanent nature which will have adverse effects on employees without giving as much advance notice as possible to the General Chairman representing such employees or such other officer as may be named, by the Union concerned, to receive such notices. In any event, not less than three months' notice shall be given, with a full description thereof and with appropriate details as to the consequent changes in working conditions and the expected number of employees who would be adversely affected.
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> 8.7 The terms operational and organizational change shall not include normal reassignment of duties arising out of the nature of the work in which the employees are engaged nor to changes brought about by fluctuation of traffic or normal seasonal staff adjustments. (Emphasis added)

On the basis of the material filed the Arbitrator is satisfied that the decision of the Company to eliminate 112 Maintenance of Way positions on the Company's Great Lakes Region, as part of an overall reduction in the work force by a total of 1,328 jobs system wide, did not constitute an operational or organizational change as defined within Article 8 of the Employee Security and Income Maintenance Plan. The material establishes beyond dispute that at the time of the layoffs the Company had experienced a sharp decline in freight traffic. In 1985 grain shipments were down some 29% while ores, metals and minerals were down 9% and machinery and manufactured goods 8%. The Company's overall traffic decline was calculated at 6%, a figure not challenged by the Union. This resulted in a severe decrease in the Company's revenues for the nine month period ending September 30, 1985. On or about September 27th the Company notified the Brotherhood, as well as the media, that the above staff reductions would be implemented effective October 14, 1985.

There appears to be little doubt that the Company's action, involving a reduction by approximately 3% of its unionized labour force, was taken as a response to the hard economic realities of the day. The Company's representatives stated to the media at the time that the 6% decline in freight, without any apparent prospect for improvement, gave rise to its action, which was prompted chiefly by dramatic reductions in the shipment of wheat and other agricultural products.

The primary issue becomes whether the circumstances cited by the Company amount to "changes brought about by fluctuation of traffic"

within the meaning of Article 8.7 of the Employment Security and Income Maintenance Plan. If it does not, the employees laid off must be compensated for the Company's failure to provide them with the three months notice contemplated in Article 8.1 of the Plan.

It might be argued that the concept of fluctuations of traffic could refer to predictable short term changes of a relatively finite duration, such as the temporary condition resulting from a grain handlers strike. However, many years of interpretation of the Employment Security and Income Maintenance Plan by prior boards of arbitration within this office have led to a broader definition. In CROA case #228 five clerical positions were abolished as a result of a curtailment of operations in passenger service between Edmonton and Calgary. The Arbitrator concluded that the actions of the Company were the result of a reduction in passenger traffic between those two points for a period of several years leading up to the Company's decision. That virtually permanent decline in traffic was found to fall within the meaning of a 'fluctuation of traffic' then found in Clause 5 of Article 8 of the Plan.

Similarly in CROA case #272, this Office concluded that a general decline in business activity giving rise to a reduction in operations constitutes a fluctuation as contemplated in the Plan. In those circumstances, it was found that the Company was exempted from the obligation to serve a technological, operational or organizational change notice on the Union or the employees affected. Similar interpretations followed in CROA case #423, case #689, and case #316.

The decisions of the Canadian Railway Office of Arbitration are plainly intended to have precedential value, to facilitate and stabilize the understanding and expectations of the parties. A consistent line of prior awards rendered by this Office has made it clear that a reduction of the workforce caused by a general decline in business does not constitute an operational and organizational change giving rise to the notice obligation provided in Article 8.1 of the Employment Security and Income Maintenance Plan. In the instant case the Company has established beyond any doubt that a 6% reduction in its overall freight volume in 1985 was the operative cause of its layoff of 1,328 employees, including the 112 Maintenance of Way personnel on whose behalf this grievance is brought. There is, moreover, nothing in the material before the Arbitrator to establish that the introduction of several pieces of maintenance equipment into the Company's system, equipment for the most part used chiefly by extra maintenance or construction gangs, contributed in any substantial way to the abolition of the jobs in question.

The Union's concern and vigilance for the interests of its members are understandable, given the broad impact of this unfortunate event. For the reasons related, however, the actions of the Company were consistent withits prerogatives under the Collective Agreement and did not violate the notice provisions of the Employment Security and Income Maintenance Plan. For these reasons, the grievance must be dismissed.

MICHEL G. PICHER
ARBITRATOR