CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1652

Heard at Montreal Tuesday, June 9th, 1987

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Appeal against B&S lay-off notices on the B.C. Seniority Territory effective 09 October, 1985.

BROTHERHOOD'S STATEMENT OF ISSUE:

The Brotherhood contends that the Company violated Article 17.2 of Wage Agreement 10.1 when on 30 September, 1985, as a result of a reduction of staff, senior employees were given lay-off notices pursuant to Article 4 of Wage Agreement 10.9.

The Brotherhood requests that the employees affected be reimbursed any loss of salary, benefits or seniority rights as a consequence.

The Company disagrees with the Brotherhood's contention.

FOR THE BROTHERHOOD:

(SGD.) G. SCHNEIDER
System Federation General Chairman

There appeared on behalf of the Company:

T.D. Ferens - Manager, Labour Relations, Montreal
M. Vaillancourt - Engineering Coordinator, Montreal

And on behalf of the Brotherhood:

G. Schneider - System Federation General Chairman, Winnipeg
M. Gottheil - Assistant to the Vice-President, Ottawa

AWARD OF THE ARBITRATOR

Tbe Brotherhood maintains that the Company violated Article 17.2 by

laying off the grievors while retaining junior employees in its service. Article 17.2 of Collective Agreement 10.1 provides as follows:

> 17.2 In the event of reduction of staff, senior qualified employees will be retained. Employees laid off, or displaced, will, if qualified, have the right to exercise their seniority on their seniority territory.

There can be no doubt that what occurred was a reduction in staff, whether it be characterized as a lay-off or an abolition of positions. The Arbitrator has considerable difficulty with the interpretation of Article 17.2 advanced by the Union. If the parties had intended that junior employees must be given notice of lay-off in advance of any senior employees, they could have so provided in express terms. They did not, however. The two sentences of Article 17.2 must be read together. The overall intention expressed by the Article is that when staff reductions are implemented senior qualified employees can retain their job security by exercising their seniority.

In a complex enterprise operating in a number of geographic locations, with numerous job classifications and functons it would be virtually impossible to implement a lay-off rationally if lay-off notices could only be provided to the most junior employees, regardless of their location or classification. Article 17.2 gives the Company the flexibility to identify those positions which can be made redundant, protecting the interests of senior employees whose positions may be eliminated by conferring bumping rights that can be exercised against more junior employees. That interpretation is further underscored by the provisions of Article 4.1 and 4.2 of the Collective Agreement which are as follows:

> 4.1 Except as otherwise provided in Articles 3.4 and 3.9, an employee, in the event of a reduction in staff, unable to hold work in his own classification or group on his seniority territory shall, within fifteen days, if qualified, displace a junior employee in the next lower classification or group in which he has established seniority. An employee failing to exercise his seniority within 15 days, unless prevented by illness or other cause for which bonafide leave of absence has been granted, shall forfeit his seniority under this Agreement.
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> 4.2 An employee, who is laid off on account of reduction in staff, and who is unable, in the exercise of seniority, to displace a junior employee on his own seniority territory in accordance with Article 4.1 may, within thirty (30) days, seniority permitting:
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> (a) Displace the junior employee on the Region in the same seniority group from which laid off. An employee who elects to displace in accordance with the foregoing shall carry to the seniority

territory to which he transfers only such seniority as he held in the classification from which he was laid off on his former seniority territory.

or

(b) Elect to take layoff.

(c) An employee electing to displace in accordance with article 4.2 (a) shall, after displacing the junior employee on the Region, retain his seniority rights on his former seniority territory in all classes or groups in which he had formerly established seniority. However, if he fails to exercise such seniority at the first opportunity to a position bulletined on his former seniority territory where the work is of an expected duration of ninety days or more, he will forfeit any and all seniority dates held in such former classes or groups. Thereafter he will have the seniority date he carried and seniority dates established on the seniority territory to which he transferred. An employee returning to his former seniority territory shall relinquish all seniority dates held on the seniority territory to which he had transferred.

Copies of bulletins shall be furnished the employees concerned.

The Union asserts that Article 17.2 states that "senior qualified employees will be retained." In an operative sense that is what the Article provides. Through the bumping procedure senior employees are able to hold bargaining unit positions in preference to more junior employees. It does not follow, however, that only the positions occupied by the most junior employees can be declared redundant. If that were true, and for the sake of argument, all of the junior employees to be laid off were in one location, and no other employees were in that location, the Company would be entirely without service in that locality. In the Arbitrator's view so rigid and unworkable a conclusion should not lightly be inferred, and could only be justified on the clearest of contractual language.

In the instant case the Arbitrator can find no Collective Agreement provision which has been violated. For these reasons the grievance must be dismissed.

MICHEL G. PICHER
ARBITRATOR