CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1848

Heard at Montreal, Wednesday, 9 November 1988

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Wage claim for the difference in wages between the before-training and after-training rate of pay on behalf of all employees working under the scope of Agreements 10.2 and 10.4.

BROTHERHOOD'S STATEMENT OF ISSUE:

To date, the Company has failed to provide training for the employees coming within the scope of Agreements 10.2 and 10.4 on the Prairie and Mountain Regions.

The Brotherhood contends that the Company is in violation of Articles 7.1, 7.2, 7.5, 7.8 and 7.12 of Agreements 10.2 and 10.4 by failing to provide training to those employees working within the scope of these agreements, and further, the Company has restricted employees from promoting in violation of Article 7.4 of Agreements 10.2 and 10.4.

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
G. C. Blundell	- Labour Relations Officer, Montreal
A. Watson	- System Labour Relations Trainee, Montreal
A. L. Fisher	- Manager, Training, Montreal

And on behalf of the Brotherhood:

G. Schneider - System Federation General Chairman, Winnipeg
M. Gottheil - Observer

AWARD OF THE ARBITRATOR

It is common ground that by a Letter of Understanding dated July 15, 1981 the parties agreed to the establishment of a training program for employees under Collective Agreements 10.2 and 10.4, with provision for higher rates of pay for employees who have completed training. That agreement, which was subsequently incorporated as Article 7 of the two collective agreements respectively, subsequently ran into problems of implementation. It is not disputed that a decline in business activity and budget restraints required a suspension of the majority of the training programs contemplated. On August 5, 1982 the Brotherhood and Company signed a Letter of Understanding providing, in part, as follows:

> This refers to our discussions concerning the temporary suspension of the majority of training programs in effect for Maintenance of Way, Bridges and Structures, and Welding Department employees. This suspension is necessary as a result of the current decline in business activity and consequent budget restraints.
>
> In order to facilitate this disruption in our training programs as it relates to employees in the Maintenance of Way and Bridges and Structures Departments, the parties herewith agree to temporarily suspend the application of those Articles of the Collective Agreement insofar as they require an employee to qualify by successfully completing the training program within a specified period of time.
>
> In this respect the first sentence of Article 27.14 and the last sentence of Article 27.17 of Agreement 10.1 are hereby suspended. In addition the last sentence of Article 3.4 and the first sentence of Article 3.11 of the Memorandum of Agreement signed March 27, 1981, which refers to the Training of Employees in the Bridges and Structures Department are also hereby suspended.
>
> In order to facilitate this disruption in the training of employees in the Maintenance of Way Welding Department, the parties herewith agree to temporarily suspend the application of that Article of the Collective Agreement which requires employees to attend a certain number of classroom and workshop instruction per year.
>
> In this respect, the second sentence of Article 8.5 of Agreement 10.5 is hereby suspended.
>
> It is further understood that employees subject to

> training in accordance with the provisions of Agreement 10.1 and the provisions of the Memorandum of Agreement signed March 27, 1981, who have already completed a portion of the classroom instruction and were therefore already scheduled to complete the final portion of their training on a designated date will receive the after training rates provided in collective agreement on the date they would have normally completed their training program. Such employees will continue receive the after training rates of pay subject to the successful completion of the training program at a later date when training recommences.

The effect of the foregoing understanding was to suspend the provisions of the original Memorandum of Agreement which required the completion of training within certain periods of time from an employee's promotion, failing which the employee would be returned to his former position and forfeit seniority in the higher classification. This understanding was extended by a further letter signed with the Brotherhood on June 28, 1983.

Subsequently, the System Federation General Chairman, CN Western Lines, declined to sign any further letter of extension in respect of the suspension of the provisions attaching to the training of employees. Specifically, a Letter of Understanding dated January 7, 1986 seeking further suspension of certain articles of the various training programs, which was signed and agreed to by the System Federation General Chairman, CN Eastern Lines, was not accepted by Mr. Schneider, the System Federation General Chairman, CN Western Lines. The Company proceeded, nevertheless, to suspend certain training programs, including the Bridges and Structures training programs for steel bridge and masonry workers.

The issue in this grievance is to what extent the Company is required to provide training and what, if any, relief is appropriate if a violation of the Collective Agreement has been disclosed. It is clear that the original memorandum establishing the training program was intended to apply to a number of collective agreements, governing some six separate categories or classifications of employees, including those falling under Agreements 10.2 and 10.4. There appears to be no dispute that the Company's training facilities are intended to be used for the benefit of employees in all of these classifications. It is also true, however, that since 1981 the major emphasis of the Company has been to give first priority in the use of its training facilities to employees in the Bridge and Building department, covered under Agreement 10.9. The Union asserts that the rights of employees falling under Agreements 10.2 and 10.4 cannot be curtailed or restricted by virtue of the treatment accorded to employees falling under other agreements.

The issue therefore becomes whether Article 7 of Agreements 10.2 and 10.4 has effectively been violated. It is far from clear to the Arbitrator, having regard to the terms of Article 7 of the agreements, that an employee can expect as a matter of absolute

entitlement to be trained within a given period of time. Articles 7.6 and 7.7 specifically refer to employees applying for training and being accepted into the training program. Article 7.8 specifically reserves to the Company the determination of the order in which the employees will receive their training. In the Arbitrator's view the language of the provision, so construed, reflects an intention of the parties to provide something substantially less than a clear entitlement to training for any specific employee within any given period of time.

When these two agreements are further construed in the context of the other agreements which also flow from the Memorandum of Agreement of March 27, 1981, it appears that the parties contemplated that the Company must make decisions with respect to the priority which would be assigned to the training of employees under the various agreements. Given its limited resources the Company has decided to place the first emphasis on training for Bridge and Building employees, who form the largest group of employees within the Bridges and Structures Department.

Bearing in mind that the Brotherhood bears the burden of proof in this grievance, the Arbitrator can see nothing in the terms of Article 7 of Collective Agreements 10.2 and 10.4, particularly in light of the permissive approach to these provisions taken by the parties over a number of years, to substantiate the position of the Brotherhood that the Company was in violation of these provisions by the manner in which it prioritized and applied the terms of the original Memorandum of Agreement to the several agreements. If it had been the intention of the parties to require that the Company be obligated to provide training to each and every employee within a certain period of time, failing which a higher rate of pay would become owing to those employees, it was open to them to do so in clear and unequivocal language. Failing any such provision, the Arbitrator cannot conclude that such was their intention, or that the instant grievance can succeed.

For the foregoing reasons the grievance must be dismissed.

November 10, 1988 (Sgd.) MICHEL G. PICHER
ARBITRATOR