

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1977

Heard at Montreal, Tuesday, 12 December 1989

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Interpretation of the word "relocate" in Article 7.7 of The Employment Security and Income Maintenance Plan (The Plan) dated April 21, 1989.

JOINT STATEMENT OF ISSUE:

The Brotherhood contends that the word "relocate" in Article 7.7 of The Plan refers to a change in an employee's work location. The Company disagrees with the Brotherhood's contention and maintains that the word "relocate" in Article 7.7 of The Plan refers to the situation where an employee, in order to hold work with the Company, has been or would be required to change his/her place of residence as contemplated in Article 6 of the Plan.

FOR THE COMPANY:

(SGD) D. C. FRALEIGH  
ASSISTANT VICE-PRESIDENT  
LABOUR RELATIONS

FOR THE BROTHERHOOD:

(SGD) R. A. BOWDEN  
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE BROTHERHOOD:

(SGD) G. SCHNEIDER  
SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

M. M. Boyle	- Manager, Labour Relations, Montreal
W. W. Wilson	- Director, Labour Relations, Montreal
J. Luciani	- Counsel, Montreal
D. C. St. Cyr	- Manager, Labour Relations, Montreal
D. McMeekin	- Labour Relations Officer, Montreal
N. Dionne	- Labour Relations Officer, Montreal
D. L. Brodie	- Labour Relations Officer, Montreal
S. Grou	- Labour Relations Officer, Montreal
M. Benedetto	- Coordinator, Engineering Special Projects, Montreal

And on behalf of the Brotherhood:

M. Gottheil	- Counsel, Ottawa
G. Schneider	- System Federation General Chairman, Winnipeg
R. F. Liberty	- Secretary/Treasurer & General Chairman, Winnipeg
R. A. Bowdan	- System Federation General Chairman, Ottawa

#### AWARD OF THE ARBITRATOR

Article 7.7 of the E.S.I.M.P. provides as follows:

- 7.7 Notwithstanding any provision in this Article to the contrary, no employee shall be required to relocate who:
- (i) has 20 years of continuous service with the company and is within 5 years of qualifying for early retirement benefits under the terms of the applicable pension plan;
  - or
  - (ii) has within the preceding 5 years been required to relocate under the provisions of the employment security plan or has voluntarily elected to transfer with his work.

The Brotherhood maintains that the term "relocate" in the foregoing provision does not mean a change of residence or domicile, but merely the movement of an employee's job location. I can find no basis of support for that position in the language of the Employment Security and Income Maintenance Plan.

Article 6 of The Plan deals broadly with "relocation expenses" and covers such benefits as moving expenses, allowances for incidental expenses, transportation expenses for travel from an employee's former location to his new location and, among other things, leave to seek accommodation in the new location. There are, moreover, provisions for loss on the sale of an employee's home and for the moving of a mobile home residence. The entire scheme and thrust of the article, read in conjunction with Article 7, addresses the circumstances of an employee who is required to relocate in the sense of changing his principal place of residence. An employee who elects to keep his original place of residence may nevertheless work in another location and receive, pursuant to Article 6.10 of The Plan, a monthly cash allowance, payable for a maximum of twelve months. In the Arbitrator's view a person in that circumstance is not one who can, by a fair construction of the words of The Plan, be deemed to have "been required to relocate" within the meaning of Article 7.7.

This conclusion, moreover, is consistent with the protections intended for employees by the spirit of that provision which,

according to Arbitrator Larson, was to minimize the dislocation of employees who are subjected to the hardship of relocating their homes and families as a result of a technological, operational or organizational change instituted at the initiative of the Company. As the Company's spokesperson points out, if the Brotherhood's interpretation were accepted, an employee who in fact moves from one work location to another which is a shorter commuting distance from his home would nevertheless be entitled to the protections of this article. That, in the Arbitrator's view, is not what was intended or reflected in the words of The Plan read as a whole. The term "relocate" within Article 7.7 of the E.S.I.M.P. refers to the relocation of an employee's principal residence.

For the foregoing reasons the grievance must be dismissed.

December 15, 1989

(Sgd.) MICHEL G. PICHER  
ARBITRATOR