CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1978

Heard at Montreal, Tuesday, 12 December 1989

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Whether or not employees covered by the provisions of Article 7.7 of The Employment Security and Income Maintenance Plan (The Plan) dated April 21, 1989, are subject to: 1. displacement, 2. layoff or 3. job abolishment in those instances involving the normal application of the Collective Agreement seniority provisions.

JOINT STATEMENT OF ISSUE:

The Brotherhood contends that employees covered by the pro-visions of Article 7.7 are protected from displacement, layoff or job abolishment under all circumstances.

The Company disagrees with the Brotherhood's contention and maintains that, in circumstances unrelated to Technological, Operational or Organizational changes, the provisions of Article 7.7 have no applicability and the normal application of the Collective Agreement governs employee displacement or employee layoff.

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. A. Bowden	- System Federation General Chairman, Ottawa
R. F. Liberty	- Secretary/Treasurer & General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

Article 7.7 of The Employment Security and Income Maintenance Plan 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 requir-ed to relocate under the provisions of the employment security plan or has voluntarily elected to transfer with his work.

The Brotherhood maintains that sub-paragraph (ii) must be interpreted to protect an employee who, having once been required to relocate pursuant an Article 8 notice is, within the period of five years, again required to relocate for any reason, including a layoff by the normal operation of the Collective Agreement which is not caused by a technological, operational or organizational change. The Company disputes that interpretation, asserting that the paragraph in question addresses only the circumstances of an employee who would, twice within the period of five years, be required to relocate as the result of a notice under Article 8 of the E.S.I.M.P.

The Arbitrator finds the position of the Company more compelling. Firstly, it is supported on the language of the interest arbitration award, including the clarification award, issued by Arbitrator Larson. A review of the awards of Arbitrator Larson reveals that he appreciated the distinction between layoffs brought about by events beyond the control of the Company, such as fluctuations in traffic and seasonal flows, as opposed to those which are instituted at the initiative of the Company and are within its control, characterized as technological, operational or organizational changes. The overall

thrust of the Employment Security and Income Maintenance Plan is to provide protections to employees where changes of the latter category are involved. In Section 12 of Arbitrator Larson's award of April 11, 1988 he made the following clarification:

> In the railway industry it has been made an express incident of the various collective agree-ments that an employee relocate, at least, within the boundaries of his region in order to preserve his employment security. Even if it were not an express contractual commitment, it is arguable that mobility is a feature of the industry and that a person who hires onto a national railway must be prepared to move from time to time as a condition of employment.
>
> In all events, subject to the amendments that I shall prescribe in this award, I think that reloca-tion under the circumstances prescribed by the employment security plan is an entirely reasonable obligation. However, there are circumstances when an employee should not be required to relocate and it is those that I intend to address.
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> Advanced service and age have been prescribed as exceptions to the rule in the jurisprudence. In Curry v. The Lakeland Library Region (1980) 3 Sask. R. 364 (S.Q.B.) the court had to decide whether a 55 year old plaintiff who had made his matrimonial home for 30 years in North Battleford, Saskatchewan had an obligation to take employment outside of that area. At p. 383 the court held:
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> > The plaintiff certainly cannot obtain similar employment in the City of North Battleford, and I think it would be most unreasonable for the defendant to suggest that she should have scoured the library systems of Saskatchewan or Western Canada to determine if similar employment was available when she is 55 years of age, has rendered 30 years of service to that library, and has established a family home in North Battleford.
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> I think it would be proper to prescribe a similar exception under the employment security provisions. That exception shall be that no employ-ee shall (be) required to relocate who has 20 years of seniority and is within 5 years of qualifying for retirement on pensionable benefits.
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> I wish to make it clear that I do not intend by that prescription to require an employee to take early retirement. He may elect not to do so. But he

> should not be required to relocate at any time with-in 5 years of the time that he becomes entitled to early retirement under the provisions of the applic-able pension plan.
>
> Another exception which I shall prescribe relates to an employee who may already have relocat-ed in the exercise of his maximum seniority rights in order to preserve his employment security or has voluntarily transferred with his work. In either case he should not be required to transfer again within some reasonable period of time, which I set at 5 years.
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> On that basis, the various employment security provisions shall be amended to provide two exceptions to the obligation to relocate as follows:
>
> > Notwithstanding any provision in this agreement 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.

In the Arbitrator's view the foregoing passage sufficiently clarifies the intention of Article 7.7 of the E.S.I.M.P. By his own words, Arbitrator Larson was addressing "... relocation under the circumstances prescribed by the employment security plan ...". Article 7.7(ii) describes two circumstances which qualify an employee for exemption from the obligation to relocate. One is that he or she must, within the preceding five years, have been required to relocate under the provisions of the employment security plan. It does not apply if a prior relocation was for some other reason. The second is that the same condition exists in respect to his or her having voluntarily elected to transfer with his or her work. It does not appear disputed that, in that sense, a transfer of work from one location to another within the Company, adversely affecting employees, is in the nature of operational or organizational change which would invoke the protections of the Employment Security and Income Maintenance Plan. That establishes, without substantial dispute by the Brotherhood, that the protections of Article 7.7 are available only to the employee who has, within a period of five years, been required to relocate pursuant to a technological, operational or organizational change or has done so voluntarily in circumstances that would require an Article 8 notice.

The next question is whether the employee so situated is immune from relocation as a result of reasons other than technological,

operational or organizational change. Absent clear and equivocal language within the Collective Agreement, and in light of the intention expressed by Arbitrator Larson, I cannot conclude that it can. The fundamental trade-off operating within Article 7.7 of The Plan is the Company's right, on the one hand, to make technological, operational or organizational changes within its discretion and control, and the protection, on the other hand, of the employee from the hardship of such changes by limiting the extent to which he or she may be subjected to relocation during a five year period. Both the Company and employees are, of course, subject to the buffeting of economic forces not within the employer's control. I can see nothing on the face of the language of these provisions, nor in the award of Arbitrator Larson, to suggest that the provisions which he framed were intended as insurance in those circumstances as well. If they were, why would the condition precedent to the protection be limited to a prior relocation under the E.S.I.M.P., rather than any relocation? Absent clear and unqualified language to the contrary, I am not prepared to conclude that this section of Article 7 of The Plan, which deals entirely with the rights and obligations of an employee who is subject to an Article 8.1 notice, was intended to have the far reaching effect argued by the Brotherhood, and impose substantial limitations on the flexibility of the Company to deal with manpower problems in the face of economic forces beyond its control.

For the foregoing reasons the grievance must be dismissed.

December 15, 1989 (Sgd.) MICHEL G. PICHER
ARBITRATOR