

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2023

Heard at Montreal, Wednesday, 9 May 1990

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Request for a notice pursuant to Article 8.1 of the Employment Security and Income Maintenance Plan dated June 18, 1985, when a Supervisor was released from his excepted employment and displaced an employee represented by the Brotherhood.

JOINT STATEMENT OF ISSUE:

On August 28, 1987, Motive Power Foreman M. Bowen of Jasper was advised that his supervisory position would be abolished effective December 31, 1987, due to an administrative work force reduction. Mr. Bowen subsequently exercised his seniority on to a position previously occupied by an employee represented by the Brotherhood.

The Brotherhood has contended that a notice pursuant to Article 8.1 of the Employment Security and Income Maintenance Plan dated June 18, 1985, should have been issued because the abolishment of Mr. Bowen's supervisory position resulted from the effects of earlier technological, operational and organizational changes which had adverse effects on their members.

The Company disagrees.

FOR THE BROTHERHOOD:

(SGD) TOM McGRATH
NATIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD) W. W. WILSON
for: ASSISTANT VICE-PRESIDENT
LABOUR RELATIONS

There appeared on behalf of the Company:

M. M. Boyle - Manager, Labour Relations, Montreal
S. Grou - System Labour Relations Officer, Montreal
D. McMeekin - System Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

R. Critchley - Accredited Representative, Vancouver

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that in November and December of 1986 the Company issued two separate technological, operational and organizational change notices to the Brotherhood respecting the reduction of some seven Engine Watchmen's positions and one Administrative Clerk position at Jasper. Subsequently the notice of December 31, 1986 was revised, reducing the six positions abolished in that notice to three. It does not appear disputed that the reductions were implemented in April of 1987.

In August of 1987 the Company decided to abolish the supervisory position of Motive Power Foreman occupied by Mr. M. Bowen. As reflected in the joint statement of issue, that decision was influenced by the reduction in the work force, and was implemented in December of 1987. In accordance with the procedures contemplated under the Collective Agreement Mr. Bowen exercised his seniority to take up a position in the bargaining unit, thereby displacing the incumbent employee, with a resulting ripple effect in other job displacements.

Article 8.1 of the Employment Security and Income Maintenance Plan provides 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.

The position of the Brotherhood is that "any ... operational organizational change ..." within the meaning of the article must include operational or organizational changes within supervisory ranks which have adverse impacts within the bargaining unit. Its representative relies, in part, on certain observations to be found in the arbitration award of Mr. Dalton L. Larson dated April 11, 1988, made in explanation of the arbitrator's amendment of the definition of operational or organizational change within the ESIMP. It is clear from Mr. Larson's award, and in particular from comments made at p.54 therein, that he did intend some clarification and, arguably, a broadening of the definition of those terms. In the Arbitrator's view, however, the amendment of the ESIMP and rationale of Arbitrator Larson can have no bearing on the interpretation of Article 8.1 for the purposes of this grievance, which was filed well in advance of the Larson award and the amendment of the ESIMP which

it implemented. The merits of this grievance are to be determined by the application of Article 8.1 of the ESIMP, and of the plan generally, as it existed at the time of the grievance, which was prior to Arbitrator Larson's award.

The Arbitrator has some difficulty with the general assertion of the Company that the abolition of a management position resulting in the displacement of bargaining unit employees can never trigger the protections of Article 8 of the ESIMP. Suppose that the Company decides, for operational purposes, to close a substantial portion of a terminal, and simultaneously abolishes a substantial number of positions both in supervisory ranks and within the bargaining unit. It appears to the Arbitrator doubtful that the parties intended or contemplated that in that circumstance a junior bargaining unit employee displaced by a senior bargaining unit employee whose job was abolished is to have the protections of the ESIMP while a bargaining unit employee at the same location, who may be still more senior, will have no such protection simply because, in the fallout of the same operational change, he or she was displaced by a supervisor returning to the bargaining unit. This is not a case of simultaneous abolition, however, and I need not make a final determination on this aspect of the dispute between the parties for the resolution of this grievance. Moreover, as there is some dispute between the parties with regard to the past practice respecting the treatment of bargaining unit employees displaced by supervisors returning to the unit as a result of the abolishment of management positions, it is preferable that a determination on that basis be made in the light of fuller and more informative evidence.

In the Arbitrator's view the evidence in the instant case does not establish that there has been an operational or organizational change within the meaning of Article 8.1 of the ESIMP, as it has been interpreted in previous awards of this Office. It is not disputed that the abolition of Mr. Bowen's supervisory job was part of a larger initiative by the Company to implement a ten per cent administrative manpower reduction for economic reasons in 1986. This led to the abolition of fifty-nine supervisory positions on the Mountain Region, forty-seven of which terminated on December 31, 1987, including Mr. Bowen's.

This Office was faced with a similar fact situation in CROA 316, although in that case the abolitions involved were of bargaining unit positions. Earlier, in CROA 284, the Arbitrator had noted that the abolition of a position may involve a "change of operations" without necessarily being an operational change in the sense intended by a job security provision. In dismissing the grievance in CROA 316 he further commented:

The fact that such a review was made in response to a general directive from a central authority does not require the conclusion that the results of such review constituted operational or organizational changes. ... the general directive, which would have been quite proper whether or not business conditions were in decline, was really to the effect that local supervision should tighten up its operations. ...

...

In the circumstances of these particular cases, then, it is my conclusion that these have not been the "technological, operational or organizational" changes contemplated by Article VIII of the job security agreement.

The instant case reveals that there was a general "belt tightening" in the administrative ranks of the Mountain Region, resulting in the abolition of Mr. Bowen's supervisory position. There is no evidence of any discontinuance of any particular service previously provided by the Company, or of any part of its operations or organizational structures. In the circumstances, for the reasons related in CROA 284 and 316 the Arbitrator is satisfied, assuming without finding that the ESIMP would apply, that the abolition of Mr. Bowen's position would not have constituted an operational or organizational change within the meaning of Article 8.1 of the ESIMP. I am likewise satisfied that the subsequent alteration of the Shop Track limits was not an operational or organizational change having adverse affects on any members of the bargaining unit, on the basis of the evidence before me.

For the foregoing reasons the grievance must be dismissed.

May 11, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR