CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2082

Heard at Montreal, Tuesday, 11 December 1990

concerning

CANADIAN PACIFIC LIMITED

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

The Union alleges the Company is in violation of Article 7, Employment Security, of the Job Security Agreement and Article 25.2 of the Collective Agreement.

JOINT STATEMENT OF ISSUE:

Ms. M.M. (Ann) Larochelle's position at Sudbury, was abolished as a result of a Technological, Operational or Organizational change. The employee elected to displace an employee with less seniority in S.S. Marie, in compliance with Article 25.2 of the Collective Agreement and Article 7 of the Job Security Agreement.

The Company contends because the employee, in S.S. Marie has relocated in the preceding 5 years, that employee cannot be displaced.

The Union contends, because the employee in S.S. Marie has relocated in the preceding 5 years, that employee is not again required to relocate, but, is subject to displacement by an employee who is not within five years of early retirement as per the rules of the pension plan.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) J. MANCHIP GENERAL CHAIRMAN	(SGD.) J. J. WORRALL for: GENERAL MANAGER OPERATION AND MAINTENANCE EAST, IFS

There appeared on behalf of the Company:

L. G. Winslow	-- Labour Relations Officer, Industrial Relations, Montreal
R. P. Egan	-- Assistant Supervisor, Labour Relations, Toronto

And on behalf of the Union:

J. Manchip	-- General Chairman, Montreal
D. J. Bujold	-- National Secretary/Treasurer, Ottawa
C. Pinard	-- Vice-General Chairman, GST,

Montreal

AWARD OF THE ARBITRATOR

The issue in the instant grievance is whether Ms. Larochelle is entitled to displace a junior employee in Sault Ste. Marie who has herself relocated in the preceding five years. Because that employee has employment security, and could not hold work at Sault Ste. Marie, she would not be required to seek work elsewhere, by virtue of the operation of Article 7.7(ii) of the Job Security Agreement which provides:

7.7 Notwithstanding any provision in this Article to the contrary, no employee shall be required to relocate who: ...

(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 result, if the Union's position is correct, the employee who would be displaced at Sault Ste. Marie by Ms. Larochelle would cease to do any productive work and would remain on full salary and benefits by virtue of her employment security status.

In the Arbitrator's view that is not the result contemplated in the award of Arbitrator Larson which gave rise to the above language, or by the provisions of the Job Security Agreement in general. A reading of Article 7 of the Job Security Agreement reveals that the extraordinary protections of that provision are conditioned on the willingness of an employee to exercise his or her seniority rights, firstly to displace into a position in the location, area and region, and alternatively, to fill unfilled permanent vacancies within other seniority groups, under other collective agreements, in other bargaining units or, finally, in a position not covered by a collective agreement. The thrust of the article is to require the employee who has the protections of employment security firstly to make every effort to retain gainful employment within the Company's operations. Article 7.7 deals, in the Arbitrator's view, solely with the circumstance of limiting the amount of relocation to which a protected employee must resort in the exercise of his or her rights. It does not follow from that objective, however, that a senior employee may displace one junior who has the protection of Article 7.7 if the result is to break the overall chain of displacement and/or relocation which is contemplated under Article 7. Clearly, Article 7.7 must be read in conjunction with the entirety of the provisions of the Job Security Agreement, and be interpreted in a manner consistent with its objectives, primary among which is keeping senior protected employees at work.

A somewhat analogous circumstance arose in CROA 1939. There it was found that an employee displaced in compliance with Article 7 of the Employment Security and Income Maintenance Plan there under consideration was not entitled to displace a junior employee who fell under the terms of paragraph (i) of Article 7.7, who was protected from displacement by virtue of having twenty years of continuous service and being within five years of early retirement. In that award the Arbitrator made the following observation:

While it is true that the arrangement so structured may appear to prejudice the rights of a senior employee as compared to those of another with less seniority, to so characterize the situation fails to appreciate the overarching purpose of The Employment Security and Income Maintenance Plan, which is to fashion for as many employees as possible terms of income maintenance in the face of a technological, operational or organization change that has a negative impact on the bargaining unit. It is not, in my view, inappropriate or counter to fundamental tenets of collective bargaining and seniority to consciously give protections to more junior employees, in the knowledge that senior employees who have achieved the right of early retirement do not need them.

Distributive questions of that kind, like the structure of salary grids, are the every day stuff of collective bargaining in any bargaining unit composed of employees with differing interests and vulnerability.

In the instant case it is not disputed that the grievor can displace junior employees other than the employee in Sault Ste. Marie who has the protections of Article 7.7(ii) of the Job Security Agreement. While it may not be her preference to relocate elsewhere, the provisions of Article 7 reflect a balancing of interests which must be respected: the junior employee who has already relocated and has the protections of Article 7.7(ii) is entitled to continue to work and cannot be forced to relocate while, on the other hand, the grievor is compelled to exercise her seniority rights as against other junior employees who are not so protected. In that way senior employees continue to hold active positions and the overall incident of relocations is minimized. Significantly, the Company avoids the consequence of having a junior employee in the position of the incumbent at Sault Ste. Marie placed on inactive status while retaining full wages and benefits pursuant to the Job Security Agreement. In the Arbitrator's view it should not be found that the parties intended that result, in the absence of clear and unequivocal language.

For the foregoing reasons the grievance must be dismissed.

December 14, 1990 (Sgd.) MICHEL G. PICHER
ARBITRATOR