CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2131

Heard at Montreal, Tuesday, 9 April 1991

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

RAIL CANADA TRAFFIC CONTROLLERS

DISPUTE:

The interpretation of paragraph 6.27, Article 6, Agreement 7.1.

JOINT STATEMENT OF ISSUE:

A number of employees from the Mountain Region applied for Student Train Dispatcher positions on the Prairie Region. Some of these employees held permanent Operator positions on the Mountain Region. They were advised that upon qualifying as Train Dispatchers on the Prairie Region they would transfer all seniority to the Prairie Region under paragraph 6.27.

The Union alleges that Articles 6.27 and 48.17 were violated by the Company and contends that an employee who owns an Operator's position on the Mountain Region and applies for and is awarded a Train Dispatcher position on the Prairie Region, maintains his Operator's position on the Mountain Region.

The Company disagrees.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) P. TAVES	(SGD.) W. W. WILSON
NATIONAL VICE-PRESIDENT	for: ASSISTANT VICE-PRESIDENT LABOUR RELATIONS

There appeared on behalf of the Company:

D. McMeekin	System Labour Relations Officer, Montreal
W. W. Wilson	Director, Labour Relations, Montreal
S. MacDougald	Manager, Labour Relations, Montreal
D. Gignac	System Labour Relations Officer, Montreal

And on behalf of the Union:

P. Taves	National Vice-President, Winnipeg
T. Sanschagrin	System General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

The following are the Collective Agreement provisions pertinent to the resolution of this grievance:

6.27 An employee transferring to another Region under the provisions of clause (b) of Article 41.6 or clause (b) of Article 48.2 will transfer with full seniority and the provisions of Article 43.7 and 47.7 will apply.

48.17 Relief Dispatchers and Relief Train Movement Directors will be protected in their positions in lower classifications of this Agreement.

NOTE: In the application of Article 48.17 a Relief Train Dispatcher who last worked as a Spare Operator on a vacancy prior to last commencing work as a Relief Train Dispatcher must return to the vacancy providing it has not been filled by Bulletin during his absence. However, if the Spare Operator vacancy is know to exist for less than five (5) working days subsequent to the date the Relief Train Dispatcher is permitted to displace under the terms of this Note, then the Chief Train Dispatcher may direct the Spare Operator to another Spare Operator vacancy. The principles of this Note shall also apply to Spare Operators released from work as Train Movement Director or Assistant Train Movement Director.

The Company submits that the grievor forfeited his seniority on the Mountain Region when he transferred from his position at McLennan, Alberta to that of Relief Dispatcher at Winnipeg, on the Prairie Region. The seniority of train dispatchers is organized on the basis of a geographical district which includes both the Mountain and Prairie Regions. By contrast, operators hold seniority on the Mountain Region and the Prairie Region separately. The issue in the instant grievance therefore becomes whether, by virtue of Article 6.27, the employees affected by this grievance, including Mr. Dixon, lost their seniority as operators on the Mountain Region when they gained the status of Relief Dispatchers on the Mountain and Prairie Regions. The Union submits that Article 48.17 preserves to them the positions which they previously held as operators on the Mountain Region.

The matter is not without some difficulty. Article 48.17 speaks of relief dispatchers being protected "in their positions in lower classifications of this Agreement." It does not, on its face, make any distinction as to territorial limitation. In resolving that question, however, it is in the Arbitrator's view significant to appreciate that Article 48.17 appears in Section Two of the Collective Agreement which is described as "... applicable to Western Lines Seniority Districts No. 5 and No. 6, Prairie and Mountain Regions".

In the Arbitrator's view the purpose of Article 48.17 is obviously to give a degree of job security to employees who agree to accommodate the Company's needs by becoming relief dispatchers. The Company does not dispute that, in the case of an operator whose prior position was held on the Prairie Region, that position remains protected for him or her while the employee assumes the duties of a relief dispatcher's position on the same region. It submits,

however, that the same protection does not arise in respect of an operator from the Mountain Region.

In the Arbitrator's view when Article 6.27 and 48.17 are read together, they do not compellingly support the result argued by the employer. On its face Article 48.17 is intended to apply to both the Prairie and Mountain Regions. The Arbitrator accepts that it is in the interests of the Company to avoid excessive displacement of employees back and forth between operators' positions and those of relief dispatchers. However, that interest is served, to a considerable extent, by the provisions of Article 48.2(b) of the agreement, whereby priority for filling relief dispatchers' positions is first given to applicants from the region where the vacancy arises, and thereafter to the other region on the western lines and finally from applicants from regions on eastern lines. In the instant case there is no suggestion that successful applicants from the eastern lines could invoke the protections sought under this grievance, as Article 48.17 is confined in its application to the western lines seniority districts. On the whole, it appears to the Arbitrator that the particular protections reserved in Article 48.17 must be seen to prevail over the more general provision respecting the transfer of seniority rights provided in Article 6.27 of the agreement. When reading the language of Article 48.17 the most compelling plain meaning of the expression ``their positions'' is positions covered by that section of the Collective Agreement, namely those on the Prairie and Mountain Regions. From that viewpoint, which the Arbitrator finds most consistent with the scheme of the agreement, the position advanced by the Union, that employees transferring from the Mountain Region to the Prairie Regions into positions as relief dispatchers retain protection in respect of their operators' positions on the Mountain Region, as provided in Article 48.17 of the Collective Agreement, must be preferred.

For the foregoing reasons the grievance must be allowed. The Arbitrator finds that the rights of Mr. Dixon under Article 48.17 were violated by the Company in the denial of his protection relative to his permanent operator's position at McLennan, Alberta. He shall be compensated for all wages, benefits, away-from-home expenses and all allowances lost as a result of the violation of the Collective Agreement.

April 12, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR