CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2450

Heard in Montreal, Wednesday, 9 February 1994
concerning
CANADIAN PACIFIC LIMITED

and
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

The Company refusing to credit Mr. L. Gilbert with the accumulated layoff benefit weeks he had to his credit at the time of layoff, upon his return to service.

EX PARTE STATEMENT OF ISSUE:

Mr. Gilbert was affected by an Article 8 notice in the early part of 1989. He was laid off and in receipt of Supplemental Unemployment Benefits. Subsequently, he was returned to work and then again laid off on April 21, 1990 and was credited at that time with sixty (60) weeks of benefits, having twelve (12) years and four (4) months of Cumulative Compensated Service. He returned to work for 2 short periods July 9, 1990 to August 11, 1990 and September 24, 1990 to October 20, 1990. However, upon his return to service on April 16, 1991, Mr. Gilbert worked for a period of over six (6) months. He was again laid off on October 18, 1991 and received Supplemental Unemployment Benefits, however, only collected for a period of nineteen (19) weeks and then advised that he had expended all of his Job Security Benefits and did not have the required twelve (12) years of Cumulative Compensated Service.

The Union contends that: 1. Mr. Gilbert did have twelve (12) years of Cumulative Compensated Service at the time of his layoff on October 18, 1991. 2. At the time of his return to service on April 16, 1991, Mr. Gilbert should have been credited with sixty (60) weeks of benefits as provided in Article 4.5 of the Job Security Agreement. Having not done this, the Company has violated this prevision of the Agreement. 3. Mr. Gilbert's period of employment between April 16 and October 18, 1991 must be considered as a return to service and termination of his layoff.

The Union requests that: 1. Mr. Gilbert be credited with sixty (60) weeks of benefits at the time of his layoff on October 18, 1992. 2. Mr. Gilbert be compensated Supplemental Unemployment Benefits for all time he was laid off subsequent to notification of the termination of his benefits or until such time his sixty (60) weeks credit was exhausted. 3. If Mr. Gilbert returned to service in 1992, that he be credited with sixty (60) weeks of benefits for his use in a subsequent layoff.

The Company denies the Union's contentions and declines the Union's requests.

FOR THE BROTHERHOOD:
(SGD.) D. MCCRACKEN
SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:
W. Stekman - Labour Relations Officer, Toronto
D. T. Cooke - Labour Relations Officer, Montreal
R. A. deMontignac - Manager, Benefit Plans, Montreal
J. Favreau - Division Engineer, Quebec Division, Montreal
D. L. Johnson - Benefit Plans Officer, Montreal
R. M. Andrews - Labour Relations Officer, Vancouver
And on behalf of the Brotherhood:
D. Brown - Senior Counsel, Ottawa
D. McCracken - System Federation General Chairman, Ottawa
K. Deptuck - National Vice-President, Ottawa
R. Della Serra - Federation General Chairman, Ottawa
P. Davidson - Counsel, Ottawa

AWARD OF THE ARBITRATOR

As is evident from the material filed, the parties are not in dispute with respect to Mr. Gilbert's status as of October 18, 1991. It is agreed that he then had 12 years of cumulative compensated service. The issue to be resolved is whether, in light of his work assignment ending October 18, 1991 Mr. Gilbert was to be credited with 60 weeks of supplemental unemployment benefits.

The grievance turns on the application of article 4.5 of the Job Security Agreement, which provides as follows:

> 4.5 An employee who at the beginning of the calendar year has completed 12 years of Cumulative Compensated Service and subsequently receives Supplemental Unemployment Benefits due to a layoff in accordance with the provisions of Article 4 of this Agreement shall, upon return to service after termination of layoff, be credited with the accumulated layoff benefit weeks he had to his credit at the time of layoff.

The issue becomes whether, as the Brotherhood contends, Mr. Gilbert's recall to work during the period between April 16 and October 18, 1991 constituted a "... return to service after termination of layoff" within the meaning of article 4.5 of the Job Security Agreement.

That issue was considered by a prior board of arbitration chaired by Arbitrator Weatherill in respect of a grievance between the Company and the then Brotherhood of Railway, Airline and Steamship Clerks (AH-125, award dated March 7, 1983)

In AH-125 Arbitrator Weatherill rejected the claim of the Brotherhood for the reinstatement of full layoff benefits for a laid off employee who was recalled to work to fill two separate vacation relief vacancies, each of three weeks' duration. At pp. 8-10 of the award Arbitrator Weatherill expressed the rationale for his decision in the following terms:

> It should be noted, parenthetically, that I am here concerned only with a truly "temporary" recall, known to be such at the time the assignment is made. The case of an employee recalled for regular work in the usual way but then suddenly laid off again is a different one. In the instant case the claimant was, in accordance with the collective agreement between the parties, called for a vacation relief assignment of precisely limited term, and the recall was properly described as "temporary".

> ...
> In the instant case, the assignment to which the claimant was entitled to be recalled and was recalled was, as I have found, a "temporary" one properly so called. Being one of more than five days, weekly benefits would be reduced for its term. At all times, however, it was clear that the claimant would still be laid off at the end of the temporary work. It would, I think, be incorrect to say that on his filling the temporary vacation relief vacancies in question here the claimant "returned to work after termination of layoff" within the meaning of clause 3 of Appendix "C" to the Job Security Agreement. Thus, the claimant's recall to such work is properly described as an interruption of a continuing layoff. The conclusion of that interruption did not constitute a new layoff and did not extend the claimant's layoff benefits beyond what they had been at the time the assignment began.

Upon a careful review of the material filed, I am satisfied that the case at hand falls within the principles applied by Arbitrator Weatherill in AH-125. The record discloses that between April 16 and October 18, 1991, Mr. Gilbert was assigned to a series of discrete, temporary assignments. Those assignments were of a precisely limited term, insofar as they involved temporary relief of regularly assigned employees for periods ranging from three to twenty days. All but the first of the temporary assignments given to Mr. Gilbert were for annual vacation relief. Additionally, the grievor's service, during the course of this period, was broken by three periods of layoff, each of roughly one week's duration.

Can it be said, in the circumstances disclosed, that Mr. Gilbert was recalled to work on a basis which would have amounted to a termination of his layoff? I think not. Like the grievor in AH-125, Mr. Gilbert was essentially recalled to fill temporary assignments in relief of employees who held regular positions and were on annual vacation. The fact that Mr. Gilbert held a more extensive series of such temporary positions than the grievor in AH-125 does not, in my view, change the nature of his recall. On the facts, it must be concluded that he was not recalled to a regularly assigned position on a permanent or indefinite basis, but rather was assigned to a series of temporary jobs of a finite duration. In these circumstances, the grievor knew, or reasonably should have known, that his laid off status was, at most, temporarily interrupted and would resume at the conclusion of the relief assignments given to him.

It appears that, in respect of one period, the temporary recall of the grievor was in excess of ninety calendar days. I am satisfied, having regard to the circumstances of this case, that that does not alter the merits of the grievance. As indicated in AH-125, a temporary recall can be for more than ninety days' duration. In my view this is clearly such a case, and is not a case which raises the issue of whether the returning of an employee to a single assignment which is greater than ninety days would exceed the bounds of a temporary recall. The case at hand involves a series of temporary recalls to assignments which were of finite duration and were known to be such at the time. In the circumstances, applying the principles expressed by Arbitrator

Weatherill in AH-125, I cannot find that the Brotherhood has established that the temporary assignments occupied by Mr. Gilbert between April and October of 1991 were sufficient to constitute a termination of his layoff for the purposes of article 4.5 of the Job Security Agreement.

For all of the foregoing reasons the grievance must be dismissed.

11 February 1994 (sgd.) MICHEL G. PICHER
ARBITRATOR