CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2593

Heard in Montreal, Tuesday, 14 March 1995

concerning

Canadian National Railway Company

and

Brotherhood of Maintenance of Way Employees

DISPUTE:

Status of Larson protected employees under article 8 implementation.

JOINT STATEMENT OF ISSUE:

In its Engineering Forces Reorganization Project (EFR), implemented on July 18, 1994, the Company decided not to abolish a number of positions held by employees with relocation protection pursuant to the E.S.I.M.A.

The Company has taken the position that the incumbents of such positions were protected from displacement by more senior employees for the duration of their relocation protection.

The Union contends that: (1.) the incumbents of such positions can be displaced by employees with greater seniority in that classification and (2.) such incumbents also retain the full scope of their relocation protections as outlined in article 7 of the E.S.I.M.A.

The Union requests that: (1.) the Arbitrator find in its favour and declare that the incumbents of the non-abolished Larson protected positions in question be required to hold those positions on the basis of seniority and retain full relocation protection pursuant to article 7 of the E.S.I.M.A.

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

FOR THE BROTHERHOOD: FOR THE COMPANY:

(SGD.) R. A. Bowden (SGD.) M. M. Boyle

System Federation General Chairman for: Assistant Vice-President, Labour Relations

There appeared on behalf of the Company:

M. Hughes – System Labour Relations Officer, Montreal

W. Agnew – Regional Manager, Labour Relations, Moncton

I. Steeves – District Manager, Moncton

J. C. McDonnell – Counsel, Toronto

And on behalf of the Brotherhood:

D. Brown – Senior Counsel, Ottawa

R. A. Bowden– System Federation General Chairman, Ottawa

G. Schneider– System Federation General Chairman, Winnipeg

P. Davidson – Counsel, Ottawa

AWARD OF THE ARBITRATOR

The Arbitrator must agree with the position of the Company that the issue in dispute in the case at hand was conclusively settled by the award of the arbitrator in CROA 1939. In that case it was ruled that a senior employee who was not "Larson protected" could not displace a junior employee who was. The reasoning in that award need not be repeated here, save to say that the Arbitrator was of the view that the Larson Award should be read in a fashion that minimizes displacement and dislocation, and which also minimizes the possibility of employees with employment security protection performing little or no productive

work. The same principle was reconfirmed in CROA 2082.

CROA 1939 concerned the Employment Security and Income Maintenance Agreement which is the subject of this grievance. In the result, the parties must be taken to have accepted the interpretation found in CROA 1939, to the extent that they have made no material amendment or alteration to the agreement over the course of intervening negotiations and renewals of their collective agreement since 1989. For these reasons the Arbitrator is satisfied that the interpretation now advanced by the Company is correct, as it is in keeping with the interpretation which the parties must be taken to have accepted.

For the foregoing reasons the grievance must be dismissed.

17 March 1995 _____

MICHEL G. PICHER
ARBITRATOR