

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2817

Heard in Montreal, Thursday, 16 January 1997

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
(RAIL CANADA TRAFFIC CONTROLLERS)**

DISPUTE:

Step III grievance concerning RTC M.A. Lamontagne being allegedly denied her rights under the Employment Security Agreement.

JOINT STATEMENT OF ISSUE:

The Company and the Union dispute the application of Educational Leave entitlement to Rail Traffic Controller M.A. Lamontagne under the Employment Security and Income Maintenance Plan.

The Brotherhood contends that the Company is denying RTC Lamontagne her rights under the Employment Security and Income Maintenance Plan.

The Company has denied the Brotherhood's contention and declined its request.

FOR THE BROTHERHOOD:

(SGD.) A. OWENS
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. TORCHIA
FOR: VICE-PRESIDENT, CN WEST

There appeared on behalf of the Company:

S. Michaud	– Labour Relations Officer, Edmonton
J. Dixon	– Manager, Labour Relations, Edmonton
D. Lanthier	– Labour Relations Officer, Edmonton
M Becker	– Manager, Labour Relations, Montreal
C Colquhoun	– Senior Technical Officer, Winnipeg
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And on behalf of the Brotherhood:

A. Owens	– General Chairman, Winnipeg
G. Hallé	– Canadian Director, Ottawa
P. Wojtoniez	– System Chairman, Montreal

AWARD OF THE ARBITRATOR

Following an article 8 notice issued to the Brotherhood on December 22, 1994, employees working within the Rail Traffic Control Centre in Winnipeg became aware of the abolishment of their positions, and their eventual obligation to make elections under the Employment Security and Income Maintenance Plan (ESIMP). A letter of understanding, dated June 13, 1995, was negotiated to oversee the exercise of the employees' options. Paragraph 3(a) of that agreement provides as follows:

3 (a) All permanent positions identified on the Company's notices will be established in Edmonton. Employees holding permanent assignments on the Winnipeg, Kamloops and Prince George offices will maintain their respective positions when these positions are consolidated into the Edmonton RTC Centre. Employees, including those on vacation, will be required to irrevocably confirm their intent to transfer with their work to the new location prior to the dates outlined below:

Winnipeg	June 15, 1995
Kamloops	December 15, 1995
Prince George	December 15, 1995

The record discloses that on or about June 13, 1995 the grievor, Ms. L.A. Lamontagne, filled out and signed a declaration form. She checked off the box next to the statement "I intend to relocate to the Edmonton RTC Centre". In a space provided below, she further indicated that her option under the Employment Security and Income Maintenance Agreement was for article 7.6 – "Employment Security, Section A – System Requirements". In a space below that option, however, she wrote in the following statement: "I may choose the educational leave depending on the answers to my questions."

The record discloses that the grievor sought a clarification with respect to her options, initially in a meeting with Ms. Joan Gaborieau, Manager, Human Resources, Winnipeg. Subsequently, the grievor was able to obtain a non-scheduled position in Winnipeg which lasted beyond the final closure of the Rail Traffic Control Centre in Winnipeg, which occurred on November 7, 1995. Her non-scheduled position in Winnipeg was a temporary position in the Account Management Centre. While it is clear that Ms. Lamontagne hoped that that position might become permanent, and that she did not wish to move to Edmonton for personal and family reasons, the position did not become permanent, and was eventually terminated on May 16, 1996. At that point Ms. Lamontagne had been advised that she was expected to report for work as a rail traffic controller at Edmonton, an obligation which would have been consistent with the election indicated on her declaration of June 13, 1995.

The thrust of the grievance is the Brotherhood's argument that the grievor was deprived of meaningful information with respect to the option of electing educational leave, which would have provided her with a paid leave at Winnipeg for a period of three years, following which her employment would have terminated. The Brotherhood seeks a declaration from the Arbitrator that the grievor's rights were violated under the ESIMP, and a direction that she be allowed to opt for educational leave.

The Arbitrator cannot sustain the Brotherhood's position. As an employee subject to the article 8 notice, and the terms of the ESIMP, as well as the letter of understanding of June 13, 1995, Ms. Lamontagne must be taken to be aware of her rights and obligations under the collective agreement and the related job security documents. Moreover, even accepting that she may have been uncertain, it is common ground that she was not bound to her initial declaration of choice, as indicated on the election form, and could have changed her election up to November 7, 1995. Also, by the very terms of the ESIMP, a failure by the grievor to fulfill her obligations under section A of article 7 of the ESIMP, concerning system requirements could, by the operation of article 7.8, revert her to the option of receiving the benefits contained in section B of article 7, which provides, in part, for educational leave.

While it is fair to conclude that the Company owed to the grievor, as to other employees, some obligation to provide information to assist in the process of electing options under the ESIMP, in the final analysis the responsibility is upon the employee to know and understand his or her options and to take appropriate action accordingly. On the material before the Arbitrator there is no indication that the grievor ever communicated to the Company that she did not wish to protect her rights under section A of article 7 of the ESIMP, or that she wished to elect the alternative protections of section B. Quite to the contrary, although she delayed for a considerable period,

and made no secret about her reluctance about going to Edmonton, Ms. Lamontagne eventually did report for work at the Edmonton RTC Centre.

There is nothing in the record which establishes before the Arbitrator that she was improperly deprived of her election, or indeed the opportunity to change her election as the process of closure and transfer of operations from Winnipeg to Edmonton unfolded prior to November 7, 1995. I must accept the submission of the Company's representatives that the employer was at all times understanding of the grievor's personal circumstances, and indeed generous in assisting her, as far as possible, in delaying the transfer of her work obligation to Edmonton. There is no basis, however, upon which the Arbitrator can find that Ms. Lamontagne has been wrongfully deprived of any of the rights which are hers under the ESIMP. Firstly, it should be stressed that Ms. Lamontagne did not have an unqualified right to elect to take an educational leave at Winnipeg. Rather, she had the right to protect work under the terms of section B of article 7, which would first include the obligation to fill vacancies both in her own bargaining unit as well as in other bargaining units, non-scheduled or management positions at her home location. It is only after exhausting those options that she could then be in a position to elect one of three further options, including educational leave. In the result, it is not entirely clear that Ms. Lamontagne would not, had she elected employment security protections under section B of article 7, have in fact obtained a permanent position within another bargaining unit. While it appears that the opportunity of some clerical work was unavailable to her, because she is not bilingual, it is less than clear that a systematic exhaustion of the options under article 7(b) of the ESIMP would not have yielded another position, whether in a bargaining unit or a non-scheduled position, at Winnipeg.

Most fundamentally, what the record reveals is that the grievor elected the option of protecting work on the system, and never made any formal notification of wishing to pursue a different option prior to the deadline date of November 7, 1995. As noted above, she must bear the responsibility for communicating her elections and overseeing the exercise of her rights and obligations under the letter of understanding of June 13, 1995 and the terms of the Employment Security and Income Maintenance Plan. The material before the Arbitrator does not disclose any violation of the terms of the ESIMP by the Company in its dealings with Ms. Lamontagne.

For the foregoing reasons the grievance must be dismissed.

January 20, 1997

(signed) MICHEL G. PICHER
ARBITRATOR