CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3025
Heard in Montreal, Thursday, 14 January 1999
concerning
CANADIAN PACIFIC RAILWAY COMPANY
and
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
EX PARTE

DISPUTE:

Interpretation and application of paragraph (g)(iii) of the definition section of the Job Security Agreement ("JSA").

EX PARTE STATEMENT OF ISSUE:

Paragraph (g)(iii) of the definition section of the JSA provides that "time off duty on account of illness, injury, authorized maternity leave, to attend committee meetings, called to court as a witness, or for uncompensated jury duty not exceeding a total of 100 days in any calendar year, shall be included in the computation of cumulative compensated service ("CCS"). The Company takes the position that this paragraph has no application in employment security ("ES") situations. Rather, the Company believes that the paragraph provides that a maximum of 100 days may be included in the calculation of CCS only in lay-off situations. The Brotherhood disagrees.

The Union contends that: 1.) Paragraph (g)(iii) of the definition section of the JSA has full application in the calculation of CCS for ES purposes; 2.) The Company's position is in violation of paragraph (g)(iii) and article 7 of the JSA; 3.) The Company's position discriminates against workers who, because of authorized absences on account of illness or injury or maternity leave, would otherwise be eligible for ES, this in violation of article 7(b) of the *Canadian Human Rights Act.*

The Union requests that the Brotherhood's interpretation be found to be correct and that paragraph (g)(iii) of the definition section of the JSA.

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

FOR THE BROTHERHOOD:
(SGD.) J. J. KRUK
SYSTEM FEDERATION GENERAL CHAIRMAN
There appeared on behalf of the Company:
R. M. Andrews - Manager, Labour Relations, Calgary
E. J. Maclsaac - Labour Relations Officer, Calgary
S. Samozinski - Director, Labour Relations, Calgary
D. Guerin - Labour Relations Officer, Calgary
B. Mittleman - Director, Employee Relations, Calgary
And on behalf of the Brotherhood:

P. Davidson - Counsel, Ottawa
J. J. Kruk - System Federation General Chain-nan, Ottawa
D. W. Brown - Sr. Counsel, Ottawa

AWARD OF THE ARBITRATOR

At the hearing the Brotherhood indicated that it was not pursuing at arbitration the issue of the application of the **Canadian Human Rights Act.** The issue therefore is whether paragraph (g)(iii) of the definition section of the Job Security Agreement applies for the purposes of calculating an employee's entitlement to employment security. The position of the Company is that since the inception of the agreement the time off duty provision found in paragraph (g)(iii) has applied only to determining an employee's entitlement to layoff benefits.

The item in question reads as follows:

> (g) "Cumulative compensated service" (CCS) means:
>
> (iii) Time off duty on account of bona fide illness, injury, authorized maternity leave, to attend committee meetings, called to court as a witness, or for uncompensated jury duty not exceeding a total of 100 days in any calendar year, shall be included in the computation of cumulative compensated service.

It is common ground that the language of the foregoing provision pre-dates the existence of employment security, a concept which came into existence in 1985. The Company submits that from the inception of ES the understanding which it had with all of the non-operating unions which were subject to the Job Security Agreement has consistently been that paragraph (g)(iii) does not apply for the purposes of calculating an employee's entitlement to ES. Rather, according to its submission, the provision has always been interpreted to be limited to determining an employee's entitlement to layoff benefits. This, its representatives submit, has been the consistent application of the provision over a number of notices of technological, operational and organizational changes which have issued over the years under article 8 of the Job Security Agreement, including changes affecting employees represented by the instant Union. In support of its submission the Company supplied the Arbitrator with letters from two union representatives of other signatory organizations, confirming their understanding that the traditional application of paragraph (g)(iii) has been in accordance with the Company's interpretation. The letters further confirm that a recent renegotiation of the Job Security Agreements affecting those organizations, which now expressly distinguishes the application of the concept of cumulative compensated service for the separate purposes of layoff benefits and employment security, is merely a confirmation of the practice and understanding which was always in place.

It is true, of course, that the instant Union did not agree with the clarification formula accepted by the five other non-operating unions.

That, however, does not change the nature of the issues and facts before me. The language governing CCS has remained unaltered as between the parties to this dispute. The overwhelming evidence before me is that from the inception of the concept of employment security the provisions of paragraph (g)(iii) have been limited to the calculation of an employee's CCS for the purposes of layoff benefits only. While at first blush the language of the provision would appear to support the interpretation and argument advanced in these proceedings by the Brotherhood, the material tabled by the Company discloses that there is a latent ambiguity in the application of the provision, and, as evidenced by the practice and understanding of the bargaining agents referred to above, it has consistently been applied to all bargaining units in the manner advanced by the employer. In the circumstances I am compelled to the conclusion that the interpretation of the Company is correct and that the instant grievance must be dismissed.

January 18, 1999

MICHEL G. PICHER
ARBITRATOR