CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3402

Heard in Montreal, Tuesday, 10 February 2004

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
EX PARTE

DISPUTE:
Claim on behalf of Mr. Chris Adamiak.

BROTHERHOOD'S STATEMENT OF ISSUE:
At the beginning of the summer of 2000, the grievor was working in Lomond, Alberta where he held relocation protection pursuant to article 7.8 of the Job Security Agreement (JSA). As a result of the serving of an article 8 notice, the grievor's full-time TMF position at Lomond was set to be abolished on July 25, 2000 [sic]. The implementation of the article 8 notice was delayed. However, the grievor's lease for his rented accommodation in Lomond was scheduled to end on July 31, 2000. Also, the grievor was advised by a supervisory employee that there would be no work for him with the railway in that area after the implementation of the article 8 change. So the grievor moved to Fort Macleod and commuted to Lomond until the implementation of the article 8 change. Subsequently, the grievor was awarded a position in Fort Macleod. The grievor requested the lump sum payment provided for in article 6.2(b) of the JSA but was denied. A grievance was filed.

The Union contends that the Company's actions violated articles 6.1(c) and 6.2(b) of the JSA.

The Union requests that the grievor be paid the lump sum payment for a renter (i.e. $14,000) in accordance with article 6.2(b) 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:
D. Guérin – Labour Relations Officer, Calgary
G. Hughes – Service Area Manager, Alberta

And on behalf of the Brotherhood:
P. Davidson – Counsel, Ottawa
J. J. Kkruk – System Federation General Chairman, Ottawa
D. W. Brown – Senior Counsel, Ottawa
H. Helfenbein – General Chairperson – Pacific Region
R. Terry – Local Chairperson, Lethbridge

AWARD OF THE ARBITRATOR

The facts in relation to this grievance are not disputed. The grievor, Track Maintenance Foreman C. Adamiak, owns a home in Fort MacLeod, Alberta. In April of 1999, by reason of an article 8 notice, he was compelled to move from an assignment which he then held at Blairmore, Alberta to an assignment in Lomond, Alberta. Initially the grievor commuted from Fort MacLeod to Lomond until November of 1999 when he secured rental accommodation nearby at Vauxhall, Alberta. It appears that he resided in the apartment at Vauxhall, occasionally returning to Fort MacLeod on weekends, until the events giving rise to this grievance.

On May 29, 2000 the Company gave the Brotherhood a notice pursuant to article 8.1 of the Job Security Agreement (JSA) advising, among other things, of the abolishment of the grievor's position as track maintenance foreman at Lomond, Alberta effective July 31, 2000. By coincidence, the lease on the grievor's apartment expired on July 31, 2000. It appears that the grievor did not renew his lease, and that in fact his apartment had been assigned to others. However the article 8 notice was not put into effect as scheduled on July 31, 2000. The job reductions were in fact implemented only in October of 2000, with a draft bidding selection process taking place on October 3, 2000. Under that bidding process the grievor successfully bid on a job at Fort MacLeod.

It is common ground that for the period between July 31 and October 16, 2000, the grievor continued to work at Lomond, Alberta, commuting daily from the house which he owns in Fort MacLeod. At issue in this grievance is whether Mr. Adamiak is entitled to relocation benefits under the Job Security Agreement. The Brotherhood notes that under the provisions of article 7.8 of the JSA, having already been compelled to move within the preceding five years, the grievor was not required to relocate under the provisions of the Employment Security Plan. He could, in other words, have remained at Lomond with the benefit of employment security payments. In fact, he preferred to work and to that end he decided to bid on the position which he secured in Fort MacLeod in October. The Brotherhood maintains that the Company failed, in the circumstances described, to provide relocation expenses in the form of a lump sum payment of $14,000 pursuant to the provisions of article 6.2(b) of the Job Security Agreement.

Article 6 reads, in part, as follows:

6.1 To be eligible for relocation expenses an employee:
…
(c) must be affected by a notice which has been issued under article 8 of this agreement and he chooses to relocate as a result of receiving an appointment on a bulletined permanent vacancy which at the time is not subject to notice of abolishment under article 8 of this agreement and such relocation takes place in advance of the date of the change, provided this will not result in additional moves being made; or

6.2 (a) In addition to fulfilling at least one of the conditions set forth above, the employee:

(i) must have two years' cumulative compensated service; and

(ii) must be a householder, i.e., one who owns or occupies unfurnished living accommodation. This requirement does not apply to articles 6.5, 6.6, 6.7 and 6.10; and

(iii) must establish that it is impractical for him to commute daily to the new location by means other than privately-owned automobile.

(iv) must be required to travel an additional 25 miles from his residence to his new location. (Does not apply to 6.10(b).)

The company maintains that in the circumstances the grievor is not eligible for the lump sum payment claimed. Its representatives submit that the grievor chose voluntarily to give up accommodation at Vauxhall with the termination of his lease, and then moved to the house which he owns in Fort MacLeod while continuing to work in Lomond by commuting between Lomond and Fort MacLeod on a daily basis. The employer argues that when the article 8 notice was finally implemented in October of 2000 there was no compulsion upon the grievor to relocate as a result of the abolishment of his position at Lomond, as he had already done so on a voluntary basis at the end of July of the same year. In fact, the Company argues that the grievor's principal place of residence was at all material times Fort MacLeod, even while he had an apartment in Vauxhall, and that his successfully bidding on a position at Fort MacLeod does not, in any event, give rise to the entitlement to relocation expenses under article 6 of the Job Security Agreement, whether in the form of relocation benefits or the alternative of lump sum payments.

The Brotherhood submits that from November of 1999 onwards the grievor's principal place of residence was Vauxhall, Alberta where he rented an apartment to be close to his work at Lomond, Alberta. Its counsel argues that it was only in the light of the article 8 notice that the grievor did not seek alternative accommodations in the Lomond area, where it appears rental dwellings are relatively scarce. In that context, the Brotherhood submits, the substance of what occurred is that the grievor was compelled to relocate his principal place of residence back to Fort MacLeod, even though he might not have known to a certainty that he would be successful in bidding on work at Fort MacLeod.

I deal firstly with the submission of the Company to the effect that at all material times the grievor never ceased to have a principal residence in Fort MacLeod, Alberta. The Arbitrator cannot agree. The fact that Mr. Adamiak may have continued to own a home in Fort MacLeod does not, of itself, qualify that dwelling as his principal place of residence. Within the context of the Job Security Agreement the critical qualifying factor is not home ownership, but rather the place of regular residence or domicile. While it may be that the grievor maintained a bank account and received mail at Fort MacLeod, those facts do not of themselves render Fort MacLeod his principal place of residence. On the contrary, I am satisfied that when he rented an apartment at Vauxhall, on a permanent basis, for the purpose of residing near his work at Lomond, Alberta, he could then fairly be said to be domiciled at Vauxhall.

The Brotherhood's claim is understandable, based on its view that the abolishment of the grievor's job at Lomond is what triggered his move to Fort McLeod. But after careful reflection, the Arbitrator cannot find that the claim is properly brought within the language of article 6.1(c) of the Job Security Agreement.

On the facts before me, it is clear that the grievor did not move to Fort McLeod because he had successfully bid on work at that location. He moved there because his rental accommodation at Vauxhall ceased to be available. The abolishment of his job at Lomond made it practical for him to return to commuting from his house in Fort McLeod rather than renting another apartment in or near Lomond.

What governs in this case is the language and intention of article 6.1(c) of the Job Security Agreement. That language is clear. The grievor can claim relocation expenses only if those expenses are incurred because "… he chooses to relocate as a result of receiving an appointment or a bulletined permanent vacancy …". In other words, Mr. Adamiak must demonstrate that his relocation was caused by successfully bidding on a position at Fort McLeod. However, that is not what the evidence discloses.

The evidence establishes that the grievor moved to his house at Fort McLeod because his lease expired in Vauxhall. Most importantly, his move to Fort McLeod came well in advance of his successfully bidding on a position at Fort McLeod. For the purposes of the Job Security Agreement his move to Fort McLeod was not "as a result of receiving an appointment …" at Fort McLeod, an event which came only months later, in October of 2000. In the result, the grievor has not brought himself within the language and intent of article 6.1(c) of the Job Security Agreement, as his move to Fort McLeod was not causally triggered by his eventual bid on work at that location. It was caused by his own election to return to a commuting arrangement between Lomond and Fort McLeod, at a time when his eventual reassignment was not yet known. It was clearly not caused by his choosing to relocate as a result of receiving an appointment on a bulletined permanent vacancy at Fort McLeod.

For these reasons the grievance must be dismissed.

April 16, 2004

(signed) MICHEL G. PICHER
ARBITRATOR