CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1138

Heard at Montreal, Thursday, September 29, 1983

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claims for the monthly allowance pursuant to article 7.10 of the Job Security Agreement dated April 26, 1979 on behalf of Messrs. K. Steen, X. Lavoie, G. Legacé and J. A. Donahue.

JOINT STATEMENT OF ISSUE:

Prior to reorganization on March 29, 1982 the grievors held permanent positions in track maintenance being headquartered at locations where they did not maintain a permanent residence.

On March 29, 1982 their permanent track maintenance positions were abolished and the grievors were required to exercise their seniority to other locations.

The grievors submitted claims for the monthly allowance pursuant to the provisions of article 7.10 of the Job Security Agreement dated April 26, 1979 which were not approved by the Company.

The Union contends that the Company is in violation of article 7 of the Job Security Agreement by the denial of a monthly allowance to the grievors pursuant to article 7.10.

The Company disagrees with the Union's contention.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) PAUL A. LEGROS	(SGD.) D. C. FRALEIGH
SYSTEM FEDERATION GENERAL CHAIRMAN	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

T. D. Ferens	– Manager Labour Relations, Montreal
D. Lord	– System Labour Relations Officer, Montreal
H. W. Hartman	– Labour Relations Officer, Moncton
P. E. Scheerle	– System Labour Relations Officer, Montreal
G. L. Edwards	– Labour Relations Assistant, Toronto

And on behalf of the Brotherhood:

G. Roach	– General Chairman, Moncton
P. A. Legros	– System Federation General Chairman, Ottawa
R. Gaudreau	– Vice-President, Ottawa
R. Roy	– General Chairman, Rivière du Loup
A. Toupin	– General Chairman, Montreal

AWARD OF THE ARBITRATOR

This grievance pertains to the grievors' claim for a monthly allowance provided under 7.10 of the collective agreement. That article reads as follows:

> If an employee who is eligible for moving expenses does not wish to move his household to his new location he may opt for a monthly allowance of $90 (effective January 1, 1983 – $105) which will be payable for a maximum of twelve months from the date of transfer to his new location. Should an employee elect to transfer to other locations during such twelve-month period following the date of transfer, he shall continue to receive the monthly allowance referred to above, but subject to the aforesaid 12-month limitation. An employee who elects to move his household effects to a new location during the twelve-month period following the date of his initial transfer will only be eligible for relocation expenses under this article for one such move and payment of the monthly allowance referred to above shall terminate as of the date of his relocation.

The background circumstances precipitating this grievance are relatively straightforward. On March 29, 1982, the Company reorganized certain track sections in the Province of Quebec. The four grievors at all material times were employed in the Company's Maintenance of Way Department. Save for Mr. Steen, the grievors commuted by automobile to their headquarters each day. Mr. Steen resided at a Company-provided facility during the week and commuted to his residence on the weekends.

Following the Company's decision to reorganize, the grievors exercised their displacement privileges under the seniority provisions of the collective agreement. As a result of the changed assignments they commuted by automobile from their residence to the differently located headquarters. Again, save for Mr. Steen the grievors travelled practically the same if not shorter distances to their new headquarters. In Mr. Steen's case he was now able to commute from his residence on a daily basis. The facts indicated that the grievors did not change their residences as a result of their changed work circumstances.

Article 8 allows the employees certain benefits that may result from the adverse effects of technological, operational and organizational changes. Amongst the benefits that might accrue to the employees are relocation expenses provided under article 7 of the collective agreement dealing with the effects of such changes. Articles 7.1(c) and 7.2(c) specifically provide:

> 7.1 To be eligible for relocation expenses an employee:
>
> (a) must have laid off or displaced, under conditions where such layoff or displacement is likely to be of a permanent nature, with the result that no work is available at his home location and, in order to hold other work on the Railway, such employee is required to relocate; or
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> (b) must be engaged in work which has been transferred to a new location and the employee moves at the instance of the Company; or
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> (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;
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> 7.2 In addition to fulfilling at least one of the conditions set forth above, the employee:
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> (a) must have two years' cumulative compensated service as defined in Clause 6 of Appendix "C"; and
>
> (b) must be a householder, i.e., one who owns or occupies unfurnished living accommodation. This requirement does not apply to articles 7.5, 7.6, 7.7 and 7.10; and
>
> (c) must establish that it is impractical for him to commute daily to the new location by means other than privately-owned automobile.

The Trade Union argues that the grievors are entitled to the relocation allowance provided under article 7.10 merely by virtue of the requirement to commute to their new headquarters by means of their automobile. That is to

say, the Employer concedes that the grievors are without any other means of reaching their new headquarters such as by means of a municipal bus service, a train service or any other mode of transportation. Accordingly the Trade Union argues that the mere requirement to commute to "a new location" as suggested by article 7.2(c) by means of their automobiles gives rise to the requested allowance.

The Employer submits that rights to an allowance under article 7.10 can only arise as a result of the adverse effects of the reorganization that precipitated the requirement for the grievors' relocation to a new residence. The objective of article 7.10, the Employer argues, is to finance an employee's requirement to commute for a limited period until his relocation to his new residence has been achieved. In this case there is no dispute that the grievors, owing to the reorganization, were not required to relocate their residences.

In having regard to the specific language of article 7.01 and 7.02 of the collective agreement, I am satisfied that the Employer's position must prevail. The grievors must bring themselves within one of the subparagraphs under article 7.1 and "in addition to fulfilling at least one of the conditions set forth above" the employees must establish their situation falls within one of the subparagraphs under article 7.2. In failing to demonstrate that they fall into any of the subparagraphs to article 7.1 (particularly 7.1(c)) the grievors have failed to establish a case for an allowance for commuting during the interim period of their relocation from one residence to another. In other words, the requirement to relocate is a prerequisite in addition to the requirement to commute to their new headquarters by automobile for purposes of entitlement to the benefit.

Because of their failure to satisfy these prerequisites the Trade Union's grievance on the grievors' behalf must be rejected.

(signed) DAVID H. KATES
ARBITRATOR