CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1787

Heard at Montreal, Thursday, May 12, 1988

Concerning

CANADIAN NATIONAL RAILWAY

And

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The interpretation and application of paragraphs 5.1 and 5.2, Article 5 of the Employment Security and Income Maintenance Plan dated June 18, 1985.

JOINT STATEMENT OF ISSUE:

The Brotherhood contends that employees who are eligible for Employment Security under Article 7 of the Employment Security and Income Maintenance Plan (The Plan) dated June 18, 1985, are eligible for training for displacement purposes under the provisions of paragraph 5.1 in line with the provisions of paragraphs 7.3 and 7.4.

It is also the Brotherhood's position that under the provisions of paragraph 5.2 of The Plan, employees are eligible for training for displacement purposes as long as they satisfy the criteria contained in sub-paragraph 5.2(b).

The Company disagrees with the Brotherhood's contentions. It is the Company's position that prior to employees becoming eligible for training under paragraph 5.1 of The Plan, they are required to fully comply with the requirements of paragraphs 7.3 and 7.4. It is also the Company's position that the provisions of paragraph 5.2 do not entitle employees to be trained for displacement purposes.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) TOM McGRATH	(SGD.) J. P. GREEN
NATIONAL VICE-PRESIDENT	for: ASSISTANT VICE-PRESIDENT LABOUR RELATIONS

There appeared on behalf of the Company:

M. M. Boyle	– Labour Relations Officer, Montreal
W. W. Wilson	– Director, Labour Relations, Montreal
S. F. McConville	– Labour Relations Officer, Montreal
G. Wheatley	– Manager, Labour Relations, Montreal
J. T. Torchia	– Labour Relations Officer, Winnipeg

And on behalf of the Brotherhood:

T. Stol	– Regional Vice-President, Toronto
A. Cerilli	– Regional Vice-President, Winnipeg

AWARD OF THE ARBITRATOR

There are two issues to be determined. The first is the Company's obligation in respect of training under the terms of Paragraph 5.1 of the Employment Security and Income Maintenance Plan. The language of the article is as follows:

> **5.1** An employee who has Employment Security under the provisions of Article 7 of The Plan who has his position abolished and is unable to hold work due to a lack of qualifications, will be trained for another position within his seniority group and, failing that, will be trained (if necessary) in order to fill a position in keeping with the provisions of Article 7. Training (if necessary) will be provided for a position for which he has the suitability and adaptability to perform the duties of that position. Such employee will receive the 40-hour straight time pay associated with his last railway classification during his period of training (hourly-rated employees, 40 x the basic hourly rate; seasonal and spare employees, 40 x the average hourly earnings over the eight weeks preceding layoff).

In the Arbitrator's view the terms of the foregoing provision are not complex. It is not denied that the language of the provision contemplates the obligation to train an employee who has employment security under the provisions of Article 7 of The Plan. The issue is whether the employee is entitled to training for some degree of positions before being required to exercise seniority rights under Article 7 of The Plan. The article must therefore be read in conjunction with the provisions of Article 7, and in particular the language of Article 7.3 and 7.4 which is as follows:

> **7.3** An employee who has Employment Security under the provisions of this Article and who is affected by a notice of change issued pursuant to Article 8.1 of The Plan, will be required to exercise his maximum seniority right(s), e.g., location, area and region, in accordance with the terms of the collective agreement applicable to the employee who has Employment Security.
>
> **7.4** An employee who has Employment Security under the provisions of this Article and is unable to hold a position on his seniority district, e.g., at the location, area and region, will be required to exercise the following options provided he is qualified or can be qualified in a reasonable period of time to fill the position involved. In filling vacancies, an employee who has Employment Security must exhaust such available options, initially on a local basis, then on his seniority district:
>
> **(a)** fill an unfilled permanent vacancy within the jurisdiction of another seniority group and the same collective agreement;
>
> **(b)** there being none, fill an unfilled permanent vacancy within the jurisdiction of another seniority group within another collective agreement and the same Union;
>
> **(c)** there being none, fill an unfilled permanent vacancy within the jurisdiction of another seniority group and another signatory union; and
>
> **(d)** there being none, fill an unfilled permanent vacancy in a position which is not covered by a collective agreement.
>
> **NOTE**: In the application of Article 7.4(d) and notwithstanding the provisions of any collective agreement to the contrary, an employee who has Employment Security while employed in a position which is not covered by a collective agreement will remain, and continue to accumulate seniority, on the list from which transferred.

In the Arbitrator's view the intention of the separate provisions of Article 5.1 and Articles 7.3 and 7.4 of The Plan are relatively clear. Article 7 provides the basic requirements for the exercise of seniority rights for employees who are affected by a notice of technological, operational or organizational change. The first obligation of such employees is to exercise their seniority rights, firstly on a location, area and regional basis. Next, failing an ability to hold a position on the Seniority District, the employee is required to fill unfilled permanent vacancies within the various jurisdictions described in Sub-paragraphs (a), (b), (c) and (d) of Article 7.4. All of the foregoing steps relate to positions into which the employee can exercise seniority rights and for which he or she is qualified or can be qualified in a reasonable period of time.

Article 5.1 addresses a separate circumstance. In the Arbitrator's view the phrase "unable to hold work" must be reasonably construed as unable, because of qualifications, to exercise seniority on any position that is the subject of

the displacement procedures contemplated in The Plan. It is therefore aimed at the employee with employment security who is unable to hold work either within his or her seniority group or within the larger pool of positions contemplated in Article 7. Where that circumstance obtains the Company is then under an obligation to train the employee, firstly for another position within his or her seniority group and, if the employee cannot succeed in being so trained, for a position outside the employee's seniority group, in the larger pool described in Article 7.4 of The Plan.

The scheme of the two articles, so construed, is to provide training for the employee whose job security could not otherwise be saved. It is not, in the Arbitrator's view, conceived as a scheme whereby unqualified employees can, as a first right, convert their displacement by virtue of a technological, operational or organizational change into a right to be trained and promoted within their own location. Such a conclusion would be substantially out of keeping with the normal expectation in an industrial relations plan to minimize the adverse impact of technological, operational or organizational change. While it would be open to the parties to make such an arrangement, it would in my view require clear and unequivocal language to support the conclusion that they intended to do so.

For these reasons the Arbitrator cannot sustain the position of the Brotherhood with respect to the interpretation of Article 5.1 of the Employment Security and Income Maintenance Plan.

I turn to consider the second issue, with respect to the meaning of Paragraph 5.2(b) of The Plan. That Article reads as follows:

> **5.2** An employee who does not have Employment Security under the provisions of Article 7 and has two or more years of Cumulative Compensated Service and:
>
> ...
>
> **(b)** will be adversely affected by a notice served pursuant to Article 8 of The Plan requiring an employee to relocate or suffer a substantial reduction in his rate of pay, will be considered for training for another position within or without his seniority group, providing he has the suitability and adaptability to perform the duties of that position and provided he has indicated a willingness to work in the job for which he may be trained whenever vacancies exist.

Simply put, the Brotherhood's position is that the foregoing language gives the employee who does not have employment security an absolute right to be trained for another position. It relies, in part, on the earlier decision of this office in **CROA 1231**. In the Arbitrator's view there is nothing in the report of that award to suggest that in that case the employees' entitlement to training was specifically argued and considered under the terms of Article 5.2(b) of the Employment Security and Income Maintenance Plan. To that extent that award is of little assistance in the instant matter.

It is trite to say that the provisions of Article 5.2(b) should be interpreted in the light of the language chosen by the parties. The article specifically provides that an employee who falls within its terms "will be considered for training" for positions inside or outside his or her seniority group, given the suitability and adaptability required for the position. In the Arbitrator's view, by any objective standard, the foregoing wording falls short of providing to the employee without employment security an absolute right to training for another position.

The provision is not meaningless, however. If it can be demonstrated that the Company has failed to properly consider whether it should train an employee without employment security for another position, it may be established that the employer has failed to honour the obligation implicit within the article. The article must, at a minimum, be construed as requiring that the employee be given fair consideration for training. For the reasons stated, however, the Arbitrator cannot sustain the Brotherhood's interpretation of Article 5.2(b).

For the foregoing reasons the grievance must be dismissed.

13 May 1988

(signed) MICHEL G. PICHER
ARBITRATOR