CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2528

Heard in Montreal, Thursday, 15 September 1994

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA) (CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT& GENERAL WORKERS)

EX PARTE

DISPUTE – BROTHERHOOD:

Violation of article 7.7 of the Employment Security and Income Maintenance Plan (ESIMP).

DISPUTE – COMPANY:

Claim on behalf of H. McKay, alleging a violation of article 7.7 of the Employment Security and Income Maintenance Agreement.

BROTHERHOOD'S STATEMENT OF ISSUE:

On August 22, 1988, Mr. Harold McKay was affected by an article 8.1 notice under the ESIMP and lost his employment in Sydney, Nova Scotia. As a result he exercised his seniority from Sydney (place of permanent residence) to Havre Boucher. On January 3, 1991, he was displaced at Havre Boucher and was unable to hold a position at that location.

It is the Union's contention that while employed in Sydney, Mr. McKay's permanent residence was Sydney. As a result of relocating out of his Sydney home terminal by exercising his seniority to Havre Boucher, he was therefore not obliged to move again within the rules of article 7.7(ii) of the ESIMP.

The Company denies any violation of article 7.7(ii) of the Plan.

COMPANY'S STATEMENT OF ISSUE:

On August 22, Mr. Harold McKay who was working in Sydney, Nova Scotia, had his position abolished through an article 8.1 notice under the Employment Security and Income Maintenance Agreement. As a result, he chose to exercise his seniority to Havre Boucher. On January 3, 1991, he was displaced at Havre Boucher and was unable to hold a position at that location.

It is the Brotherhood's contention that while employed in Sydney, N.S., Mr. McKay had his permanent residence at that location and that as a result of having to exercise his seniority to Havre Boucher, he was required to relocate his permanent residence. It is the Brotherhood's further contention that having relocated once, Mr. McKay was not again required to relocate under the provisions of article 7.7(ii) of the ESIMP when he was displaced from his position at Havre Boucher and could no longer hold a position at that location.

The Company's position is that while Mr. McKay exercised his seniority to work at different locations, he never relocated out of Inverness which was his principal place of residence, preferring to rent an apartment or reside on CN

property at no extra cost to himself. Under these circumstances, it is the Company's contention that Mr. McKay could not rely of the provisions of article 7.7(ii) of the ESIMP to avoid relocation.

FOR THE BROTHERHOOD:	**FOR THE COMPANY:**
(SGD.) T. N. STOL	**(SGD.) M. M. BOYLE**
NATIONAL VICE-PRESIDENT	**for: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS**

There appeared on behalf of the Company:

O. Lavoie	– System Labour Relations Officer, Montreal
L. F. Caron	– Manager, System Labour Relations, Montreal

And on behalf of the Union:

T. E. Barron	Representative, CAW, Moncton

AWARD OF THE ARBITRATOR

The instant grievance turns on the application of article 7.7(ii) of the Employment Security and Income Maintenance Agreement (ESIMA). It provides as follows:

> **7.7** Notwithstanding any provision in this article to the contrary, no employee shall be required to relocate who:
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> > **(i)** has 20 years of continuous service with the company and is within 5 years of qualifying for early retirement benefits under the terms of the applicable pension plan; or
> >
> > **(ii)** has within the preceding 5 years been required to relocate under the provisions of the employment security plan or has voluntarily elected to transfer with his work.

The sole issue before the Arbitrator, as reflected in the *ex parte* statements of issue filed by the parties, is whether the transfer of Mr. McKay's employment from Sydney to Havre Boucher involved a relocation within the meaning of paragraph 7.7(ii). During the course of the hearing the Company made submissions to the effect that the Employment Security and Income Maintenance Agreement does not contemplate a person in the circumstance of Mr. McKay, who was entitled to elect early retirement, having the protection of article 7.7(ii). That issue, however, is not properly before the Arbitrator. Clause 12 of the Memorandum of Agreement establishing the Canadian Railway Office of Arbitration provides, in part, that:

> The decision of the Arbitrator shall be limited to the dispute or questions in the joint statement of issue submitted to him by the parties or in the separate statement or statements as the case may be ...

I am without jurisdiction to deal with any issue beyond the scope of the statements of issue filed. The only issue raised by the Company is the grievor's entitlement to rely upon the protections of article 7.7(ii) in light of its submission that he did not relocate for the purposes of the ESIMA when he displaced from Sydney to Havre Boucher. This award must, therefore, be confined to that question.

Mr. McKay joined the Company in 1948. At the time of his application for hire his principal residence was with his family in Inverness, Nova Scotia. The record discloses that in 1975 he was employed as a labourer in Sydney, Nova Scotia, and occupied that position until August 30, 1988 at which time it was abolished pursuant to an article 8 notice under the ESIMA. He then exercised his seniority in September of 1988 to displace a junior employee at Havre Boucher, Nova Scotia.

During the years of his service at Sydney, between June of 1975 and August of 1988 Mr. McKay occupied an apartment in Sydney where he lived five days a week, and on some occasions seven days per week. It appears that he commuted on weekends to his mother's home in Inverness during that time. It is not disputed that the apartment which he occupied in Sydney contained his own furnishings, including a stove which he purchased. The distance between Sydney, Nova Scotia and Inverness is 100 miles, estimated to be a 2-1/2 hour drive.

Upon displacing to Havre Boucher in 1988 Mr. McKay gave up his apartment in Sydney and moved his personal belongings to his mother's home in Inverness. He took up residence at that location, although it appears that

he stayed in a Company bunk house during the work week while he was employed at Havre Boucher. For the purposes of this case, the Union is content to assert that Mr. McKay's place of principal residence during the time of his service at Havre Boucher was Inverness, Nova Scotia. Inverness is some 57 miles from Havre Boucher, a travelling distance of approximately 1-1/2 hours by road under normal conditions.

On September 30, 1990 Mr. McKay was displaced from his position at Havre Boucher by a senior employee, Mr. A.D. Williams, as a result of an article 8 notice. The Company then took the position that Mr. McKay had three options: to be placed on layoff and receive layoff benefits, to take early retirement for which he was eligible or to exercise his seniority to displace onto a position at Moncton. Faced with the choices being offered by the Company Mr. McKay opted to elect the layoff. He remained on layoff until his retirement, subject only to receiving occasional assignments of work.

The Union grieves that Mr. McKay should not have been compelled to choose among the three options put to him by the Company, as he was entitled to the protection of article 7.7(ii) of the ESIMA. It submits that his move from Sydney to Havre Boucher constituted a relocation for the purposes of that article, and that he could not be compelled to relocate to Moncton to protect his seniority and employment security status. In the circumstances, the Union submits that he should have been entitled to the protection of employment security benefits as contemplated in article 7.7, without the obligation to relocate, and obviously without the obligation to choose as between electing early retirement or layoff.

The Company submits, in effect, that from 1948 to the present Mr. McKay never left his parental home in Inverness. It maintains that during the many years of his employment at Sydney, notwithstanding that he lived in a rooming house for a time, and for a substantial number of years in an apartment, Inverness continued to be his principal place of residence. It maintains that since he continued to reside at Inverness during his service at Havre Boucher, he did not relocate from Sydney to Inverness in the five year period prior to his displacement at Havre Boucher, as contemplated in article 7.7(ii) of the ESIMA.

The Arbitrator cannot accept the Company's position. The ESIMA must, like any document which is the product of collective bargaining, be read in a logical and rational sense, having regard to its purpose, and to its various parts. Article 6 of the ESIMA deals in some detail with relocation benefits. Article 6.6, which deals with eligibility for relocation expenses, provides as follows:

> **6.2** 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; and
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> **(b)** 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
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> **(c)** must establish that it is impractical for him to commute daily to the new location by means other than privately-owned automobile.

The article goes on to provide various benefits, such as door-to-door moving expenses, insurance, storage, an allowance for incidental expenses, transportation expenses, leave to seek new accommodation and further provisions including protection against loss on the sale of a home and costs in relation to the termination of an unexpired lease.

If the Company's position is to be accepted, over a substantial number of years, while he occupied an unfurnished apartment in Sydney, and worked within two blocks of that residence, Mr. McKay maintained his principal residence some 100 miles distant, at Inverness. While it may be true that he maintained a strong attachment to the family homestead, returning as he did to his mother's home in Inverness on weekends and holidays, it would, I think, depart substantially from the concept of residence and relocation reflected within the ESIMA to sustain the position of the Company in the case at hand.

If it is accepted, for the sake of argument, that the phrase "relocate" within article 7.7 of the ESIMA refers to the relocation of an employee's principal residence, as the Company contends and the Union does not substantially dispute, on what basis can it be said that the grievor's principal residence continued to be Inverness over the substantial period of years he worked in Sydney and resided there as a householder in an unfurnished apartment? The location of an individual's residence for mailing purposes, purposes of federal or municipal taxation or his or her voting eligibility are, like the concept of principal residence for the purposes of employment, issues to be examined on their own particular merits, having regard to the purpose and context of a given residency requirement. Plainly,

the purpose underlying the notion of relocation within the ESIMA is to protect an employee against the dislocation of moving his or her household, that is to say, from an unfurnished apartment or house in one location to like accommodation in another location.

In the case at hand it is not disputed that when the grievor's work location changed from Sydney to Havre Boucher he was compelled to surrender his unfurnished apartment in Sydney, and to move his furnishings to his new residence at Inverness. The fact that he was returning to his parental home is, in the Arbitrator's view, neither here nor there for determining whether he was required to relocate within the meaning of article 7.7(ii) of the ESIMA. Clearly he was obliged to relocate, as it was entirely impracticable to contemplate commuting from Sydney to Havre Boucher, a distance of some 119 miles. The case might arguably be different if Mr. McKay had chosen to keep his apartment in Sydney, and to live in the bunkhouse accommodation at Havre Boucher during the week, commuting back to Sydney on weekends. However, that did not happen. Clearly, in this case, there was a relocation of both of Mr. McKay's place of work and his principal residence in 1988. In the result, with his displacement from employment at Havre Boucher in September of 1990, Mr. McKay was entitled to invoke the protections of article 7.7(ii) of the ESIMA, and could not be compelled to relocate once again to Moncton.

For the foregoing reasons the grievance is allowed. The Arbitrator finds and declares that the Company violated article 7.7(ii) of the ESIMA in respect of the options made available to Mr. McKay at the time of his displacement from his position as a janitor at Havre Boucher in September of 1990. He remained a protected employee within the meaning of the Employment Security and Income Maintenance Agreement, and would not have forfeited his employment security by failing to displace to Moncton. The Arbitrator therefore directs that the grievor's status as an employee entitled to employment security protection as of September of 1990 be reinstated, and that he be fully compensated in respect of any wages or benefits lost, with interest.

16 September 1994

(signed) MICHEL G. PICHER
ARBITRATOR