CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3139

Heard in Montreal, Thursday, 14 September 2000

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

The moving of certain section headquarter locations.

BROTHERHOOD'S STATEMENT OF ISSUE:

By way of article 8.1 notice dated May 29, 2000, the Company advised the Brotherhood of its intention to abolish certain positions across the country and re-establish at various locations certain other positions. The Company also intends, in conjunction with the changes contemplated by the notice, to move the headquarters location of certain sections.

The Union contends that: **1.)** The Company is in violation of section 2.11 and is prohibited from implementing changes, without mutual agreement. **2.)** In the alternative, if it is found that the Company has the right to implement its intended changes in this regard despite 2.11, the Company would be in violation of article 8.1 of the Job Security Agreement and 14.1 and 14.2 of the collective agreement.

The Union requests that: **1.)** It be declared that the Company cannot institute its intended section headquarter changes without the Union's agreement as contemplated by section 2.11 of the collective agreement.

In the alternative, if it is found that the Company can make the intended headquarter changes despite 2.11, the Brotherhood requests that it be declared that: **1.)** Such changes can only be made by serving notice pursuant to article 8.1 of the Job Security Agreement. **2.)** A bulletin advertising the positions at the new location is required.

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:

J. Dragani – Labour Relations Officer, Calgary
E. J. MacIsaac – Labour Relations Officer, Calgary
R. M. Andrews – Manager, Labour Relations, Calgary
R. Tumak – Service Area Manager
A. Hastman – Track Maintenance Supervisor, Winnipeg

And on behalf of the Brotherhood:

P. Davidson – Counsel, Ottawa

J. J. Kruk – System Federation General Chairman, Ottawa
D. W. Brown – General Counsel, Ottawa
G. D. Housch – Vice-President, Ottawa
K. Deptuck – Vice-President, Ottawa
D. McCracken – Federation General Chairman, Ottawa
M. Couture – General Chairman – Eastern Region, London

AWARD OF THE ARBITRATOR

The facts in relation to this grievance are relatively straightforward. On May 29, 2000 the Company issued a notice under article 8 of the Job Security Agreement abolishing and establishing a number of positions. Among the changes implemented by the Company was a move of headquarters for three section employees previously headquartered at Field, B.C. The individuals in question, Lead Track Maintainer Hersak, Track Maintenance Foreman Hould and Track Maintainer/Truck Driver Jaswal were notified that their new headquarters would be established at Golden, B.C. In that circumstance the Company issued an article 8 notice in respect of Mr. Hersak, as the relocation to Golden would cause disruption to him. The Company took the position, however, that Mr. Hould and Mr. Jaswal, both of whom reside in Golden, were not adversely affected by the organizational change, and therefore were not entitled to article 8 notices in the circumstances.

Similar situations, the details of which need not be discussed for the purposes of this award, arose in respect of the move of another crew's headquarters from Rogers to Golden and another's from Sicamous to Revelstoke. In each case the Company provided article 8 notices to employees for whom the move would involve some personal disruption or expense, and provided no such notice to employees who already resided in the location of the newly assigned headquarters.

The position of the Brotherhood is that the Company was obligated, in the circumstances, to provide article 8 notices to all of the employees concerned, to abolish all of their positions, and to re-bulletin the positions as vacancies at the newly established headquarters for bid by employees generally. The Brotherhood also notes that in other parallel situations, including for example the article 8 notice issued on June 28, 1996 in respect of a change of headquarters for positions of welder foreman and welder from Britt to Sudbury, Ontario, and a similar relocation of headquarters from Hurkett to Manitouwadge changes were implemented in the manner which the Brotherhood submits is appropriate.

While the Brotherhood's statement of issue raises an alleged violation of section 2.11 of the collective agreement, no argument was brought to bear on that article in the brief presented at the hearing. If it were necessary to deal with any such argument, the Arbitrator is not persuaded that that provision has any bearing in the case at hand. It specifically deals with timekeeping, to be commenced at certain designated tool houses, outfit cars or shops. It also contemplates mutual discussion where, for temporary purposes, alternative designated assembly points are to be established. The case at hand simply does not deal with such a circumstance.

The articles of the Job Security Agreement raised by the Brotherhood are, in part, as follows:

> **8.1** The Company will not put into effect any Technological, Operational or Organizational change of a permanent nature which will have adverse effects on employees without giving as much advance notice as possible to the General Chairman representing such employees or such other officer as may be named by the Union concerned to receive such notices. In any event, not less than 120 day's notice shall be given, with a full description thereof and with appropriate details as to the expected number of employees who would be adversely affected.
>
> **14.1** except as otherwise provided in Clauses 14.4 to 14.6, inclusive, and except for positions of trackman "B" which need not be bulletined, employees shall be advised by bulletin on the first Monday of each month of all vacancies or new positions in their department …
>
> **14.2** Bulletins will show classification of position, location, and particulars of living accommodation. If the vacancy is temporary, its expected duration, if known, will be advertised on the Bulletin. Bulletins will be standard in format across the system.

The Brotherhood has in fact pointed to no provision of the collective agreement which would either expressly or implicitly limit the ability of the Company to change the headquarters of an established position. There is nothing which has been drawn to the Arbitrator's attention which would prevent the Company from moving an existing position from one headquarters location to another, subject of course to giving the appropriate notice of operational or organizational change where such a move involves adverse effects.

The ability to establish and abolish positions and to declare vacancies is among the most important of management prerogatives. If, as the Brotherhood contends, the Company is obligated to abolish all of the positions at the former headquarters, and post vacant positions at the newly established headquarters, in the circumstances disclosed at Golden and Revelstoke, such an interpretation must be supported by relatively clear and unequivocal language in the text of the collective agreement. No such language is brought to the Arbitrator's attention. Section 14.1 establishes the obligation of the Company to properly bulletin vacancies and new positions on a departmental basis on the first Monday of each month. Section 14.2 requires that bulletins disclose the location and duration of temporary vacancies which are posted. These provisions contain nothing in respect of any obligation upon the Company to abolish positions and re-post them when it determines that an established job should be moved from one headquarters location to another. If such a provision were in the collective agreement it might well be of benefit to senior employees at the new headquarters location seeking an improvement in their own work opportunity. However, that is an advantage which must be clearly negotiated into the terms of the collective agreement.

Nor can the Arbitrator place substantial weight on the fact that in other circumstances, as for example in the Ontario locations of Sudbury and Manitouwadge, the Company did choose to abolish all positions and re-post vacancies upon establishing a new headquarters location. Nothing in the collective agreement would prevent it from doing so. Equally, however, nothing in the collective agreement would require such an approach.

In the end, the Company's obligation is governed by the language of article 8.1 of the Job Security Agreement. It explicitly provides that notice must be given with respect an operational or organizational change "which will have adverse effects on employees". In the circumstances at hand, it is not disputed that there were no adverse effects upon the employees who reside at the location of the newly established headquarters. On those facts the Arbitrator can see no basis upon which the Brotherhood could insist upon the issuing of an article 8 notice to the employees whose headquarters are relocated and who in fact suffer no adverse effects. More importantly, there is clearly nothing within the language of article 8.1 which would expressly or implicitly requires that employees who are the subject of an article 8 notice must have their positions abolished and re-posted for general bid in any particular circumstance. While that manner of proceeding may be appropriate in the context of certain forms of general reorganization, there is no obligation upon the Company to pursue the option of job abolishment and re-posting in every circumstance of technological, operational or organizational change. To so conclude would obviously introduce a factor of substantial disruption in workforce stability, of a kind and degree which must be supported by clear and unequivocal collective agreement language. No such language is to be found in either the collective agreement or the Job Security Agreement placed before the Arbitrator.

For all of the foregoing reasons the grievance must be dismissed.

September 18, 2000

(signed) MICHEL G. PICHER
ARBITRATOR