CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1786

Heard at Montreal, Thursday, May 12, 1988

Concerning

CANADIAN NATIONAL RAILWAY

And

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

JOINT STATEMENT OF ISSUE:

The Brotherhood contends that Ms. M.J. Cmikiewicz of Winnipeg, who was directly affected by a notice issued pursuant to paragraph 8.1, Article 8 of the Employment Security and Income Maintenance Plan (The Plan) dated June 18, 1985, is entitled to "Maintenance of Basic Rates" protection under the provisions of paragraph 8.9, regardless of the fact that at the time the change took place, Ms. Cmikiewicz's rate of pay was not reduced by $2.00 or more per week.

The Company disagrees with the Brotherhood's contention and maintains that when an employee is affected by a notice issued pursuant to Article 8 of The Plan, eligibility for the "Maintenance of Basic Rates" provision described in paragraph 8.9 depends on whether the employee's rate of pay is reduced by $2.00 or more per week at the time the change takes place.

JOINT STATEMENT OF FACTS:

On May 1, 1987, Ms. Cmikiewicz's position of Tariff Compiler II at Winnipeg, which was paid at the 'G' level rate of pay, was abolished as a result of a notice issued pursuant to Article 8 of The Plan. At the time of the change, Ms. Cmikiewicz displaced onto a position of Tariff Compiler III at Winnipeg, which was paid at the 'H' level rate of pay. As a result, she increased her salary by $14.11 per week.

It is the Brotherhood's position that the grievor complied with the provisions of sub-paragraph 8.9(a), which required her to accept the highest rated position at her location to which her seniority and qualifications entitled her. Therefore, should the grievor be displaced at a later date, for any reason, onto a lower rated position than the position abolished by the original Article 8 notice, she would be eligible for "Maintenance of Basic Rates" protection for the remainder of the three-year period. The incumbency would be based on the rate of pay of the position which was originally abolished.

It is the Company's position that eligibility for "Maintenance of Basic Rates" protection under paragraph 8.9 must be established at the time a change pursuant to an Article 8 notice takes place. If, at the time of change the employee's rate of pay is reduced by $2.00 or more per week and the employee satisfies all of the criteria contained in paragraph 8.9, the employee is eligible for an incumbency for a period of three years. If, on the other hand, the employee's rate of pay is not reduced by $2.00 or more per week at the time of change, eligibility for "Maintenance of Basic Rates" has not been established at the time of change and the employee is not eligible for an incumbency under the provisions of paragraph 8.9

FOR THE BROTHERHOOD:

(SGD.) TOM MCGRATH
NATIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) J. P. GREEN
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:

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

AWARD OF THE ARBITRATOR

The dispute turns on the interpretation of Article 8.9 of the Employment Security and Income Maintenance Plan. It provides, in part, as follows:

> **8.9** An employee whose rate of pay is reduced by $2.00 or more per week, by reason of being displaced due to a technological, operational or organizational change, will continue to be paid at the basic weekly or hourly rate applicable to the position permanently held at the time of the change providing that, in the exercise of seniority, he;
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> **(a)** first accepts the highest-rated position at his location to which his seniority and qualifications entitle him; or
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> **(b)** if no position is available at his location, he accepts the highest-rated position on his basic Seniority Territory to which his seniority and qualifications entitle him.
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> The maintenance of basic rates, and four-week guarantees if applicable, will continue until;
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> **(i)** the dollar value of the incumbency above the prevailing job rate has been maintained for a period of three years, and thereafter until subsequent general wage increases applied on the basic rate of the position he is holding erase the incumbency differential; or
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> **(ii)** the employee fails to apply for a position, the basic rate of which is higher, by an amount of $2.00 per week or more than the basic rate of the position which he is presently holding and for which he is qualified at the location where he is employed; or
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> **(iii)** the employee's services are terminated by discharge, resignation, death or retirement.
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> In the application of (ii) above, an employee who fails to apply for a higher-rated position, for which he is qualified, will be considered as occupying such position and his incumbency will be reduced correspondingly. In the case of a temporary vacancy, his incumbency will be reduced only for the duration of that temporary vacancy.
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> **...**

It is not disputed that in the instant case the grievor succeeded, in effect, in "bumping up" after being displaced from her position due to a technological, operational or organizational change. On May 1, 1987 Ms. Cmickiewicz's position of Tariff Compiler II at Winnipeg, a position which attracted the 'G' level rate of pay, was abolished as a consequence of an Article 8 Notice under the Employment Security and Income Maintenance Plan. The Plan was established to minimize the impact on the job security of employees adversely affected by technological, operational or organizational change of a permanent nature. Instead of being forced to exercise her seniority to bump into a lower paid position, the grievor was able to displace onto a position of Tariff Compiler III, also at Winnipeg, a job in the more highly rated 'H' level of pay. As a result her salary increased by $14.11 per week.

The grievor has remained in that position without disturbance. The grievance comes before the arbitrator, however, because of a disagreement in principle between the parties respecting Ms. Cmikiewicz's residual rights. The Brotherhood maintains that the grievor retains the protections of Article 8.9 for a period of no less than three years in the event that she is, for any reason, subsequently displaced from the higher rated position that she obtained following the Article 8 Notice that abolished her prior position. In other words, it asserts that should she be displaced, at any time during the period of three years, from her position of Tariff Compiler III, and forced on to a

position whose remuneration is $2.00 or more per week less than her former salary as a Tariff Compiler II, she should continue to receive an incumbency, guaranteeing her the minimum of her former salary of Tariff Compiler II for no less than three years from the date she was first displaced from that position.

The Company disagrees. It asserts that the terms of Article 8 of the Employment Security and Income Maintenance Plan have no application to Ms. Cmikiewicz because she has not suffered a reduction in pay by $2.00 or more per week as a result of her displacement due to a technological, operational or organizational change. The Company concedes that if, at some future time, an employee senior to the grievor and qualified for her position is displaced by virtue of a technological, operational or organizational change, and exercises his or her seniority rights to displace the grievor into a lower paid position in which her salary is reduced by $2.00 or more per week, she would be entitled to invoke the protections of Article 8.9, and retain the "term insurance" of that article, with a full three years of protection at the higher incumbency of her salary as a Tariff Compiler III. The Company asserts, however, that if she is subsequently displaced for any reason other than a technological, operational or organizational change - for example as a result of a downturn in business - she could not invoke the protections of Article 8.9. In its view she could not do so because neither her original displacement from the position of Tariff Compiler II, nor subsequent displacement from the position of Tariff Compiler III would fall within the terms of Article 8.9 of The Plan.

Having regard to the language of Article 8.9, the Arbitrator is constrained to agree with the Company. The wording of the language of the article clearly contemplates that the entitlement of an employee to its protections is to be assessed at the time of displacement, and not at some later date. It appears to be common ground that technological, operational and organizational changes can involve the displacement of large numbers of employees, with the very real possibility that a single employee may be displaced more than once as he or she accepts the highest-rated position to which the employee is entitled within a location or Seniority Territory. An employee who is so buffeted continues to be protected by the incumbency provisions of Article 8.9. In general, however, no employee is protected from displacement for reasons unrelated to technological, operational and organizational changes. When, for example, a downturn in business necessitates a reduction in the work force, employees who are displaced to lower paying jobs cannot invoke the wage incumbency protections of any provision similar to Article 8.9 of the Employment Security and Income Maintenance Plan. Whatever the merits of a system that provides protection in one circumstance and not in another may be, that is the reality of the bargain which the parties have made. From the standpoint of the grievor's circumstances, therefore, the Brotherhood's argument that she may be negatively impacted at some future time by a job displacement that is not subject to the Employment Security and Income Maintenance Plan is not compelling. That is a reality that all employees live with under the terms of the Collective Agreement.

The Arbitrator is also satisfied that the language of Article 8.9 supports the Company's position in the instant case. I must conclude that the provisions of the Article are, by its own terms, triggered only in the circumstance of an employee who is displaced due to a technological, operational or organizational change and whose pay is consequently reduced by $2.00 or more per week. Ms. Cmikiewicz does not satisfy that condition, since it is common ground that she in effect obtained a promotion to a higher-rated position as a result of her displacement.

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

13 May 1988

(signed MICHEL G. PICHER
ARBITRATOR