CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1870

Heard at Montreal, Wednesday, 11 January 1989

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE

Former employees C.S.R.C. that are laid off are not required to take available work or recall outside their home location.

BROTHERHOOD'S STATEMENT OF ISSUE

D. C. Fox, G. B. Henry, R.P. Hanaha, J. Flynn and R.C. Walker former employees of Canada Southern Railway Company were on laid off status and eligible for Weekly Layoff Benefits under Article 'B' of the Special Agreement dated July 2nd, 1985.

It is the Brotherhood's contention that these employees were recalled under Article 13.4 of the 5.1 Agreement to take work outside of their home location contrary to Article 'B', specifically B6 (B6(e) and B6(e)(iii)(c)) and a letter dated September 26th, 1985 confirming such.

This matter was processed through K1, K2 and K3 of the Special Agreement dated July 2nd, 1985.

The Company is claiming that the matter is not properly before them whereby the employees were recalled under Article 13.14 of the 5.1 Agreement and, therefore, the dispute under Article 'K' of the Special Agreement is improper.

FOR THE BROTHERHOOD:

(SGD.) TOM MCGRATH
NATIONAL VICE-PRESIDENT

There appeared on behalf of the Company:

S. F. McConville	– Labour Relations Officer, Montreal
G. Wheatley	– Manager, Labour Relations, Montreal

And on behalf of the Brotherhood:

T. N. Stol	– Regional Vice-President, Toronto

AWARD OF THE ARBITRATOR

In 1985 the Company and the Toronto, Hamilton and Buffalo Railway, a subsidiary of Canadian Pacific Ltd., jointly purchased the Canada Southern Railway Company, itself a subsidiary of Conrail. To integrate the employees of the Canada Southern Railway Company into the operations of the Company, with particular regard to their standing under the terms of its collective agreement with the Brotherhood as well as the Brotherhood of Railway, Airline and Steamship Clerks, a special agreement was made dated July 2, 1985. On a day designated as the date of integration the former CSR employees were assigned seniority dates as employees of the Company at the bottom of the existing seniority list of the bargaining unit. They were, however, granted prior rights and homestead rights under the terms of the Special Agreement whereby they could invoke a preference of employment on that portion of the former CSR territory operated either by the Company or by CP Ltd., as well as a preference of employment on the entire territory based on their CSR seniority. Simply put, prior rights give the former CSR employee preference for current and future CSR position on the CSR property while homestead rights give the employee, for a limited time, the opportunity to bid across company lines, moving from one purchasing railway to another, to bid on a CSR position anywhere in its former territory, based on his or her CSR seniority.

The Special Agreement provides specific layoff and severance benefits for former CSR employees. Article B6 of the agreement establishes, in part, that an employee who is not otherwise disqualified is eligible for a benefit payment in respect of layoff or to a severance payment, provided he or she meets a number of requirements, including the obligation to have exercised full seniority rights at his or her home location.

The grievors, who are former CSR employees, were laid off, although there is some dispute whether their layoff was pursuant to the Special Agreement or by virtue of Article VIII of the Employees Security of Income Maintenance Plan. In any event, on March 16, 1988 the Company posted vacation relief positions at Sarnia and Windsor, which are outside the home locations of the grievors. When no applications were received the Company invoked Articles 13.13 and 13.14 of Agreement 5.1, and recalled the grievors from layoff to fill these positions. It is against that action that the instant grievance is brought. The Union maintains that, pursuant to the terms of the Special Agreement, the grievors cannot be compelled to accept recall to positions outside of their home location.

The Union's claim is based on the provisions of Article B6, more specifically the following:

> **B.6 (i)** An employee who is not disqualified under Clause (iii) hereof, shall be eligible for a benefit payment in respect of each full week of seven consecutive calendar days of layoff (herein called "a claim week") or to a severance payment provided he meets all of the following requirements:
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> ...
>
> **(e)** He has exercised full seniority rights at his home location (greater Metropolitan area where applicable) except as otherwise expressly provided in Clause (iii), paragraphs (b) and (c) of this Article B.6.
>
> **B.6 (iii)** Notwithstanding anything to the contrary in this Article, an employee will not be regarded as laid off:
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> ...
>
> **(c)** If he declines, for any reason, other than as expressly provided for in Clause (iii)(b) of this Article B.6, recall to work at his home location (greater Metropolitan area where applicable).

The Arbitrator must accept the characterization of these provisions advanced by the Company's representative. In essence Article B speaks to the entitlement to layoff benefits and severance payments, in respect of which Article B.6 is fashioned as part of a claims procedure. It simply states, in part, that an employee who declines recall to his or her home location is not to be considered as laid off for the purposes of the article. The Arbitrator must agree with the Company that there is nothing in these provisions that can be construed as an understanding, expressed or implicit, with respect to general rights of recall for CSR employees. On the contrary, the Special Agreement contemplates that following the date of integration such employees are to fall under the provisions of the Company's collective agreement, and presumably to be governed by them, save for those displacements that are causally linked to the integration. If the parties to the Special Agreement had intended that employees of the purchased railway

should have special recall rights unrelated to the process of integration, or should be generally immune from the consequences of declining recall to locations other than their home location, they could have said so expressly. No such provision being found in the Special Agreement, the Arbitrator must conclude that the claim which the grievors assert in respect of their right of recall is unfounded.

For the foregoing reasons the grievance is dismissed.

January 13, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR