CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1899

Heard at Montreal, Thursday, 16 March 1989

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

BROTHERHOOD:

Claim for training under Article 5.7 and 5.8 of the Employment Security and Income Maintenance Plan as a result of an Article 8 Notice served covering employees at Capreol, Mimico, Malport and McMillan Yard.

COMPANY:

Claim for training under Articles 5.7 and 5.8 of the Employment Security and Income Maintenance Plan as a result of an Article 8 Notice served covering employees at Capreol, Mimico, Malport and McMillan Yard.

EX PARTE STATEMENT OF ISSUE:

BROTHERHOOD:

The Brotherhood claims that the Company is obligated to provide training in accordance with 5.7 of the Employment Security and Income Maintenance Plan for employees affected by the Article 8 Notice served on April 27th, 1988. It is being processed in keeping with 5.8.

The Company refused training in accordance with 5.7 as requested by the Union and maintains that this grievance must be progressed before the Administrative Committee of the ESIMP beginning with 2.7.

COMPANY:

It is the Company position that the provisions of Article 5.7 of The Plan do not obligate the Company to provide training for employees affected by the Article 8 notice served on April 27, 1988.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD) TOM MCGRATH	(SGD) W. W. WILSON
NATIONAL VICE-PRESIDENT	FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

G. Wheatley	– Manager, Labour Relations, Montreal
M. M. Boyle	– Labour Relations Officer, Montreal
A. Watson	– Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

R. E. Gee	– Representative, Toronto
T. N. Stol	– Regional Vice-President, Toronto

AWARD OF THE ARBITRATOR

The grievance as filed raises two issues: the first is whether Article 5.7 provides a right to training in the circumstances of this case, the second whether Article 5.8 does so. Those articles appear within the context of Article 5 of the Employment Security and Income Maintenance Plan which governs the training of employees whose positions have been abolished and who are unable to hold work due to a lack of qualifications. Articles 5.7 and 5.8 provide as follows:

> **5.7** In addition, the Company, where necessary and after discussion with any Organization signatory to The Plan, will provide classes (after work or as arranged) to prepare present Company employees for upgrading, adaptation to technological change and anticipated new types of employment in the Company. The cost of such retraining will be borne by the Company.
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> **5.8** Upon request, the subject of training of an employee or groups of employees under any of the above provisions will be discussed by the General Chairman or equivalent and the appropriate officer of the Company either prior to or at the time of layoff or at the time of the serving of the notice pursuant to Article 8 or as retraining under Article 5.7 is considered. Any unresolved differences between the parties concerning the usefulness of training for future Company service, the necessity for retraining, or the suitability and adaptability of an employee for training, may be progressed to arbitration in keeping with Article 2.10 of The Plan.

The Arbitrator deals firstly with the application of Article 5.7. I have difficulty with the submission that the terms of that article apply in the circumstances of this case. Article 5.7 is expressed to be "in addition" to the more general provisions in respect of training for employees whose positions have been abolished or who are laid off or adversely affected by a notice pursuant to Article 8 of The Plan. The language of Article 5.7 plainly addresses a separate circumstance, dealing with training of "present Company employees" for upgrading and adaptation to technological change and anticipated new types of employment. The language so fashioned contemplates the ongoing introduction into the workplace of new types of technological equipment and systems which necessitate a degree of periodic training and retraining of employees, without job loss and quite apart from the separate circumstance of job abolishment or layoff.

Most significantly for the purposes of the instant grievance, Article 5.7 does not, by its very terms, reflect an intention of the parties that it should apply to all forms of operational or organizational change within the meaning of Article 8.1 of The Plan. There is nothing in the material before the Arbitrator to suggest that the Article 8 Notice served on the employees at Capreol, Mimico, Malport and McMillan Yard was as a result of a technological change or "anticipated new types of employment" as contemplated in Article 5.7 of The Plan. While Article 5.7 would appear to impose an affirmative obligation upon the Company where the conditions necessary for the preparation of employees for upgrading and adaptation to meet the needs of technological change are established, that is not the circumstance in the case at hand. For these reasons the Arbitrator cannot accept the submissions of the Brotherhood with respect to the application of Article 5.7 of the Employment Security and Income Maintenance Plan in the instant case.

I turn to consider the alternative issue respecting the application of Article 5.8. The language of that provision does contemplate discussion between the General Chairman (or equivalent) and the appropriate Company officer of the subject of training under any of the provisions of Article 5 at a number of possible times including "at the time of the serving of the notice pursuant to Article 8 ...".

Strictly speaking, in the instant case, that language would appear to apply. The material indicates that some discussion has taken place, and that there are unresolved differences remaining between the parties. However, acording to the language of Article 5.8, such differences are to be progressed to arbitration in keeping with Article 2.10 of the Employment Security and Income Maintenance Plan. For the reasons related in **CROA 1900**, it is established that an issue progressing under the terms of that provision may not proceed before this Arbitrator until it has been considered and duly referred by four members of the Administrative Committee of The Plan, in accordance with Article 2.10. That has not occurred in the instant case. Therefore, although for the reasons related in **CROA 1787** the Arbitrator must confess to having some difficulty with respect to the suggestion that the training contemplated under Article 5 may be for the purposes of displacement, I would in any event be without jurisdiction to resolve that issue in the circumstances of the instant case.

For the foregoing reasons the grievance must be dismissed.

March 17, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR