CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1939

Heard at Montreal, Tuesday, 12 September 1989

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The requirements for Mr. H. R. England, Atlantic Region to relocate in compliance with the Employment Security and Income Maintenance Plan, as a result of an Article 8 notice issued on April 21, 1988.

JOINT STATEMENT OF ISSUE:

On July 21, 1988, Mr. H.K. McKay's position at Sydney was abolished as a result of a Technological, Operational or Organizational change and he elected to displace Mr. England. Mr. England was required to exercise his seniority in compliance with Article 7 of The Plan in order to maintain his eligibility for Employment Security.

The Brotherhood contends that the Company should have permitted Mr. England to displace Mr. Williams, a junior employee at Havre Boucher.

The Company contends that Mr. England was prohibited from displacing the junior employee in compliance with Article 7 of the Employment Security and Income Maintenance Plan. Under the terms of paragraph (i) of the Larson Award (p.59) a junior employee who has 20 years of continuous service and is within 5 years of early retirement is protected from displacement if it would result in the junior employee being required to relocate. Mr. England, on the other hand, was not afforded protection from relocation under this provision as he was eligible for early retirement at the time of the TO&O change.

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:

M. M. Boyle	– Manager, Labour Relations, Montreal
W. W. Wilson	– Director, Labour Relations, Montreal
D. McMeekin	– Labour Relations Officer, Montreal
S. Grou	– Labour Relations Officer, Montreal
J. R. Fraser	– Labour Relations Officer, Moncton
N. Marchand	– Observer

And on behalf of the Brotherhood:

G. T. Murray	– Regional Vice-President, Moncton
Tom McGrath	– National Vice-President, Ottawa

AWARD OF THE ARBITRATOR

The issue is whether the grievor, Mr. H.R. England, was entitled to protection against being forced to relocate. The dispute concerns the meaning of the award of Arbitrator Dalton L. Larson dated April 11, 1988. At page 59 of that decision Mr. Larson awarded the following language of The Employment Security and Income Maintenance Plan:

> Notwithstanding any provision in this agreement to the contrary, no employee shall be required to re-locate who:
>
> (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;
>
> (ii) has within the preceding 5 years been requir-ed to relocate under the provisions of the employ-ment security plan or has voluntarily elected to transfer with his work.

The instant case concerns the application of subparagraph (i) of the foregoing provision. Strictly speaking Mr. England does not fall within the language of that article: although he has more than twenty years' continuous service with the Company he is fully entitled elect early retirement, and is not "within five years of qualifying" for it.

The thrust of the Brotherhood's position is that it is inequitable to require Mr. England to be forced to relocate upon being displaced by a junior employee. In the Arbitrator's view that issue was clarified and resolved by the supplementary award of Mr. Larson, made partly in response to a dispute between the parties respecting the interpretation of his initial award of April 11, 1988. The supplementary award, dated June 17, 1988 states, in part, as follows:

> **1. RELOCATION OF EMPLOYEES**
> At page 15 of the award I stipulated two exceptions to the obligation to relocate under the various employment security provisions as follows:
>
> Notwithstanding any provision in this agreement to the contrary, no employee shall be required to relocate who:
>
> (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;
>
> (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.
>
> **(1) LONG SERVICE EMPLOYEES**
> The Companies took the position that the long service exception only relieves an employee of the requirement to relocate "during the period that he has no option but to move or lose his benefit of employment security." They argued that under those provisions once the employee meets the eligibility requirement of early retirement he must relocate or take early retirement. He cannot continue to re-ceive employment security benefits until the age of mandatory retirement. They said that if it were otherwise, it would mean that some employees might remain on full pay without any meaningful work for up to 15 years.
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> That is a correct position. Both of the exceptions prescribe five year periods within which an employee cannot be required to relocate. In each case, after that period expires the exception no longer applies. Under paragraph (1) the exception is described as applying to an employee who has 20 years of continuous service "and is within 5 years of qualifying for early retirement benefits ..." After the employee qualifies for early retirement the words of that provision cannot be read to apply to him. A close reading of the award shows that it was not my intention that the exception would apply once the employee is entitled to retire on pension-able benefits.
>
> It is true that will put long service employees at risk of being required to move at an even later stage in their working careers at a time when it will be even less likely that they will want to move. However, it must be remembered that the early retirement benefit was voluntarily negotiated and was designed to provide a measured form of security to long service employees who may not wish to continue to work for any variety of reasons. At that stage if they chose not to relocate they will

> not forfeit their employment security because they may be entitled to elect to go on early retirement benefits – or, perhaps, supplementary unemployment benefits. An employee with 20 years of service under the SUB plan is guaranteed 80% of his basic rate of pay for 3 years or up to five years for employees with 30 years of service. That could take the employee right up to the age of mandatory retirement in some cases.
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> The point is that at that stage employees have other options that they can exercise to avoid moving if their places of residence are more important to them than their jobs. It becomes their choice and not solely that of the Company. It was the exercise of that choice that I was seeking to protect. I did not intend to extend the protected period beyond five years from the time that they become eligible for early retirement.

In the Arbitrator's view the foregoing and in particular the final sentence of the last paragraph leave no doubt as to the intention of the language awarded by Mr. Larson in the decision of April 11, 1988. It was plainly not intended to provide to an employee who has already achieved eligibility for the protections of early retirement benefits the further protection of immunity from the obligation to relocate. The rationale explained by Arbitrator Larson is that, in his view, there is sufficient protection for that employee in the option of electing early retirement rather than being forced to move.

While it is true that the arrangement so structured may appear to prejudice the rights of a senior employee as compared to those of another with less seniority, to so characterize the situation fails to appreciate the overarching purpose of The Employment Security and Income Maintenance Plan, which is to fashion for as many employees as possible terms of income maintenance in the face of a technological, operational or organization change that has a negative impact on the bargaining unit. It is not, in my view, inappropriate or counter to fundamental tenets of collective bargaining and seniority to consciously give protections to more junior employees, in the knowledge that senior employees who have achieved the right of early retirement do not need them. Distributive questions of that kind, like the structure of salary grids, are the every day stuff of collective bargaining in any bargaining unit composed of employees with differing interests and vulnerability.

For the foregoing reasons the Arbitrator must conclude that the position adopted by the Company is in compliance with the Collective Agreement. For the purposes of clarity, it should be emphasized that The Employment Security and Income Maintenance Plan is an integral part of the Collective Agreement, and must be read rationally in conjunction with its other terms. The language appearing on page 59 of Mr. Larson's award of April 11, 1988, being more specific to the fact situation at hand, must be viewed as taking precedence over any general seniority provisions to be found within the Collective Agreement.

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

September 15, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR