CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1979

Heard at Montreal, Wednesday 13 December 1989

Concerning

CANADIAN PACIFIC LIMITED

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim for wages and Job Security Benefits for employees at the Transcona Rail Yard and Transcona Rail Butt Welding Plant.

JOINT STATEMENT OF ISSUE:

On December 15, 1986, the Company issued a notice pursuant to Article 8.1 of the Job Security Agreement to the Union advising that effective March 14, 1987, four (4) positions in the Transcona Rail Yard and twelve (12) positions in the Transcona Rail Butt Welding Plant would be abolished due to a technological, operational and organizational change. On December 18, 1986, the employer issued Bulletin WH-86 advising that effective January 5, 1987, fourteen (14) positions in the Transcona Rail Yard and twenty-five (25) positions in the Transcona Rail Butt Welding Plant would be laid off for an indefinite period which included the abolished positions contained in the Article 8.1 notice of December 15, 1986.

The Trade Union contends that: **1.)** The employer violated Article 8.1 of the Job Security Agreement by failing to provide the required three-month notice to the Union prior to implementing a technological, operational or organizational change. **2.)** The four (4) senior laid off employees in the Rail Yard and the twelve (12) senior laid off employees in the Rail Butt Welding Plant be reimbursed for all lost wages and benefits while improperly laid off from January 5, 1987, until March 14, 1987, inclusive. **3.)** The four (4) employees whose jobs were abolished in the Rail Reclamation Plant and the twelve (12) employees whose jobs were abolished in the Rail Butt Welding Plant are entitled to the benefits set forth under Article 8.9 of the Job Security Agreement effective on March 16, 1987, onward. **4.)** All employees that were displaced from their positions or had their positions occupied by one of the sixteen (16) employees so referred to in Item 3 above, shall qualify for benefits set forth in Article 8.9 of the Job Security Agreement effective on March 16, 1987. **5.)** All subsequent chain-reaction displacements of employees by employees referred to in 3 and 4 above are entitled to the same benefits as those cited in Items 3 and 4. **6.)** All employees affected by this Article 8 notice to be made whole for all lost wages and/or benefits.

The Company denies the Union's contention and declines payment.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD) M. L. MCINNES	(SGD) E. HEPWORTH
SYSTEM FEDERATION GENERAL CHAIRMAN	FOR GENERAL MANAGER, OPERATION & MAINTENANCE, HHS

There appeared on behalf of the Company:

L. G. Winslow	– Labour Relations Officer, Montreal
B. Mittleman	– Counsel, Montreal
J. M. Lemire	– Deputy Engineer of Track, Montreal

And on behalf of the Brotherhood:

M. Gottheil – Counsel, Ottawa
M. L. McInnes – System Federation General Committee, Vancouver

AWARD OF THE ARBITRATOR

The material discloses that on December 15, 1986 the Company issued an Article 8.1 notice abolishing a number of positions effective March 14, 1987. Shortly thereafter, on December 18, some thirty-nine employees were given notice of layoff for reasons unrelated to technological, operational or organizational change, which were to take effect January 5, 1987. Those positions included the sixteen positions which were already subject to the prior Article 8.1 notice. On January 5, 1987 the Brotherhood grieved, asserting that the layoff effective January 5, 1987 was in fact the result of a technological, operational or organizational change, and that it should be the subject of a three-month notice in conformance with Article 8.1 of the Job Security Agreement. The position of the Company is that the January 5, 1987 layoff was in fact due to a shortfall in deliveries of new rail to its plant, and that the Job Security Agreement has no application.

The material further discloses that on or about February 13, 1987 employees from the second shift were recalled to work effective March 2, 1987, although the sixteen employees on the third shift who are the subject of this grievance were not. They remained on layoff until the effective date of their permanent layoff on March 14, 1987 pursuant to the original Article 8.1 notice. The Brotherhood maintains that the sixteen employees were subjected to a technological, operational or organizational change effective January 5, 1987, and are entitled to the protections of the Job Security Agreement as of that date, including the appropriate notice. It notes that until the matter was raised by the Brotherhood, certain of the employees subject to the January 5 layoff were treated as being laid off under the Job Security Agreement by the Company, which, for a time, made payments to them under the provisions of Article 8.9 of the Job Security Agreement. This was subsequently stopped, however, and the amounts paid, which the Company treated as an erroneous overpayment, were subsequently deducted from the pay of the employees concerned.

In the Arbitrator's view nothing can turn on the fact that the Company, for payroll and accounting purposes, initially treated the employees as being under the provisions of the Job Security Agreement. The issue is whether they were, on January 5, 1987, laid off as a result of a technological, operational or organizational change within the meaning of Article 8 of the Job Security Agreement which provides, 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 three months' notice shall be given, with a full description thereof and with appropriate details as to the consequent changes in working conditions and the expected number of employees who would be adversely affected.

It is well established that employees who are the subject of a notice pursuant to Article 8.1 of the Job Security Agreement are not immune from being laid off during the three month notice period, for reasons other than technological, operational or organizational change. They can, in other words, be laid off pursuant to the terms of the Collective Agreement, as a result in a downturn in business. (*See* **CROA 705**.)

In the Arbitrator's view that is what transpired in the instant case. After a close review of the material I am satisfied that the layoff of January 5, 1987 was caused directly by the Company's inability to secure a sufficient supply of rail for its operations, both from the Algoma Steel Company as well as from Japanese suppliers, in the first three months of 1987. The material before me discloses that the balance of rail on hand from the Algoma Steel Company totalled 3,069 tons as at December 31, 1986. It is not disputed that some 4,500 tons of rail are necessary for a three shift operation over a one month period. The rail so processed, however, must be of several different qualities, including the highest quality Japanese steel which was then still being awaited on delivery. In light of that evidence I am satisfied, on the balance of probabilities, that as of January 5, 1987, the date of the grievance, the Company was justified in concluding that reduced supplies of rail necessitated the layoff of the employees who were subject to the layoff bulletin of December 18, 1986. The employer was then in substantial uncertainty as to the sufficiency of rail supplies for operations at the Transcona Rail Butt Welding Plant and the Transcona Rail Yard. I

must therefore conclude that the sixteen employees were initially laid off for reasons unrelated to technological, operational or organizational change within the meaning of Article 8.1 of the Job Security Agreement.

The material further discloses that when the supply of rail improved, as became apparent on or about February 13th, one shift was recalled to work effective March 2nd. I am not satisfied that the Brotherhood has discharged the burden of proof of establishing that as of that date the Company had a sufficiently certain supply of rail to justify the recall of the third shift. In so concluding I note that the balance of Algoma Steel rail on hand as of the end of January 1987, being 4,878 tons, would not be a guarantee of full-scale, three-shift protection for the period of one month. As noted above, production is predicated on the output of various qualities of rail of which the Algoma 136-pound rail intermediate is but one type. The uncertainty of the supply of the Japanese rail, the earliest delivery of which was scheduled for late February, left the Company with no assurance that it could, as of March 2, function with three shifts. The Company states that it was not confident at that time that inventory would be adequate to allow the recall of the third shift, and I must, on balance, view that position as objectively justified on the evidence before me.

The Arbitrator finds that the layoff of the sixteen employees who are the subject of this grievance, in accordance with the notice of January 5, 1986, was, for reasons unrelated to technological, operational or organizational change. The employees were therefore not entitled to notice under Article 8 of the Job Security Agreement. No violation of its provisions, or of the provisions of the Collective Agreement is disclosed, and the grievance must be dismissed.

December 15, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR