CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2200

Heard at Montreal, Tuesday 12 November 1991

concerning

CANADIAN PACIFIC LIMITED

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

The applicability of Article 4.13(a) of the Job Security Agreement upon the resignation of D. Stetch of Winnipeg.

JOINT STATEMENT OF ISSUE:

The position of Chief Clerk at Winnipeg Diesel Shop was the subject of an Article 8.1 notice and the position was abolished on the completion of duties, June 30, 1989.

Mr. D. Stetch resigned from the service of the Company on April 30, 1989, being the incumbent on the position of Chief Clerk.

The Union claims that Mr. D. Stetch is entitled to severance pay due to the permanent job reductions and his subsequent declaration that he would have remained in the service until June 30, 1989, had he been aware of the provisions of Article 4.13(a) of the Job Security Agreement.

The Company declined the claim on the basis that Mr. D. Stetch is no longer an employee or bargaining unit member and that as he had resigned voluntarily, he was not adversely affected by any Company initiated staff reduction.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) D. J. KENT	**(SGD.) D. A. LYPKA**
FOR: SYSTEM GENERAL CHAIRMAN	**FOR: GENERAL MANAGER, OPERATIONS & MAINTENANCE, HHS**

There appeared on behalf of the Company:

K. E. Webb	– Labour Relations Officer, Vancouver
D. J. David	– Labour Relations Officer, Montreal
C. Graham	– Supervisor, Training and Accident Prevention, Materials, Montreal
R. A. Hamilton	– Personnel Manager, Finance & Accounting, Montreal
J. C. Provain	– Area Supervisor, Angus Store, Montreal

And on behalf of the Union:

D. Deveau	– Executive Vice-President, Calgary
J. Manchip	– Executive Vice-President, Montreal
C. Pinard	– Division Vice-President, Montreal
H. Holmes	– Assistant Division Vice-President, Windsor
E. K. McIntosh	– Assistant Division Vice-President, McAdam
D. Kent	– Assistant Division Vice-President, Vancouver
J. Covey	– Assistant Division Vice-President, Medicine Hat
R. Pagé	– Local Chairman, Montreal

AWARD OF THE ARBITRATOR

The Union's claim in respect of the severance payment entitlement of Mr. Stetch is made under article 4.13(a) of the Job Security Agreement which provides as follows:

> **4.13(a)** In cases of permanent staff reductions, an employee with two years or more of continuous employment relationship at the beginning of the calendar year, may, upon submission of formal resignation from the Company's service, claim a severance payment as set forth below but such severance payment will not in any event exceed the value of one and one-half years' salary at the basic rate of the position held at the time of abolishment, displacement or layoff.

The Company submits that because Mr. Stetch resigned from the Company on April 30, 1989, prior to the effective abolition of his position, which finally occurred on June 30, 1989, he cannot be said to be an employee covered article 4.13(a) of the new Job Security Agreement.

In the Arbitrator's view a purposive interpretation of article 4.13(a), as well as the specific language of the general terms of article 4.13, lends support to the position advanced by the Company. Firstly, in the information provided to employees in respect of their ratification ballot, the Union's negotiating committee described the improvements to the Job Security Agreement, in part, as follows:

> In the case of permanent staff reductions, severance payment can be taken when an employee position is abolished *without* having to exercise seniority in the basic seniority territory.
>
> (emphasis in original)

The abolition of a position is necessarily the subject of an article 8 notice, such as issued in this case. It does not follow, however, that the notice is tantamount to the abolition of the position. A notice of abolition can be rescinded, as the Company submits has occurred in the past. In that setting, it appears reasonable that the parties would predicate the right of an employee to claim severance payment to the actual abolition of his or her position. Previously, it was only at that time that the obligation to exercise seniority, which was eliminated by the new agreement, would have been exercised. The effective thrust of article 4.13, therefore, is that the right of an employee to claim severance payments matures only when his or her position has in fact been abolished.

That analysis is further supported by the language of article 4.13(c)(ii) of the Job Security Agreement. It deals with the eligibility of employees with twenty or more years of accumulated compensated service, and the computation of credit weeks to be applied in their case. The rights of employees in that category are made to depend upon the date of their resignation in relation to their period of continuous layoff. This, in the Arbitrator's view, is consistent with the contemplation of the parties that the right to receive a severance payment upon resignation contemplated in article 4.13 of the Job Security Agreement is to be exercised only following the abolishment, displacement or layoff which impacts an employee.

In the instant case none of those events in fact transpired, as Mr. Stetch voluntarily resigned his position some two months prior to its abolition. In these circumstances, regardless of the reasons for his actions, the grievor cannot be said to fall within the contemplation of the protections of article 4.13(a) of the Job Security Agreement. For the foregoing reasons the grievance must be dismissed.

November 15, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR