CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2294

Heard at Montreal, Thursday, 15 October 1992

concerning

CANADIAN PACIFIC LIMITED

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

Ms. G. Howell's entitlement to a severance payment in accordance with Article 4.13 of the Job Security Agreement.

UNION'S STATEMENT OF ISSUE:

On January 8, 1991, the Company served an Article 8 Notice announcing the abolishment of 10 positions in the Transportation Department, 9 of which to be re-established and 1 abolished permanently.

Ms. G. Howell and F. Willis applied for a severance payment in accordance with Article 4.13 of the Job Security Agreement. Both were directly affected by the change. The Company relied on a circular letter issued by the Vice-President, Industrial Relations

that Ms. Willis being junior was the person entitled to the severance payment. The Union relied on seniority being the governing factor. The Company denied the grievance.

FOR THE UNION:

(SGD.) C. PINARD
FOR: EXECUTIVE VICE-PRESIDENT

There appeared on behalf of the Company:

C. Finch	– Supervisor, Administration Mechanical – System, Montreal
D. David	– Labour Relations Officer, Montreal
R. A. Hamilton	– Personnel Manager, Finance & Accounting, Montreal

And on behalf of the Union:

C. Pinard	– Division Vice-President, Montreal
G. Howell	– Grievor

AWARD OF THE ARBITRATOR

The claim turns on the application of article 4.13 of the Job Security Agreement. It provides, in part, as follows:

> **(a)** In case 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 the abolishment, displacement or layoff.

The issue is whether, in the circumstances presented in this grievance, the senior or the junior of two employees who both wished to avail themselves of electing to claim a severance payment should be so entitled.

It is common ground that severance payments originated in the mid 1960's, as a result of the recommendation of a board of conciliation chaired by Mr. Justice Munroe. Pursuant to the recommendations of that board job security benefits came to include severance pay for employees permanently laid off. Under that scheme, the benefits flowed to the most junior employee. Later, the language of article 4.13 of the Job Security Agreement was introduced, following contract negotiations in 1989. The position of the Company is that no change was intended or made with respect to the awarding of severance pay to junior employees under the terms of that provision. The Union, however, submits that the implicit intention of the parties is that the senior employee who wishes to avail himself or herself of a severance payment should be entitled to do so. In that regard it refers the Arbitrator to articles 3.3(a)(iii), 4.2(i)(c), 7.8(1) and 7.10 of the Job Security Agreement which, it submits, provide specific advantages to senior employees.

It is common ground that in the instant case there was a net reduction of one permanent position. In the result, the grievor was not compelled to surrender her employment. Her ability to retain work in that circumstance is, of course, in keeping with the overall intention of the Job Security Agreement. The Arbitrator must agree with the submission of the Company that the purpose of the Job Security Agreement, read together with the collective agreement, is to safeguard the employment of senior employees, with junior employees being first impacted by job reductions.

It is true, as the Union stresses, that seniority provisions are of great importance to employees. The issue of how seniority is to be applied, however, must be determined having regard to the specific provisions of a collective agreement. When rights are tied to seniority, such as promotion, the order of layoff or recall, the election of vacation periods and the like, they must be found within the terms of the parties' agreement. Where, as in the case of article 4.13 there is no language which establishes that senior employees are to have a prior right of election, the issue becomes whether such a right is to be inferred from the provision, or from the Job Security Agreement as a whole.

I am satisfied that it cannot. Firstly, the history of the practice between the parties prior to the introduction of article 4.13 of the Job Security Agreement clearly supports the position of the Company that it is junior employees who are to be made subject to layoff, and to the payment of severance benefits in that eventuality. On a strict reading of the terms of article 4.13, it is arguable that the Company retains an unfettered discretion as to the selection of the employee or employees who wish to elect to receive severance pay. It is not necessary to go so far, however, for the purposes of this award. As noted above, there is nothing in the language of the article, in the history of its evolution or in the scheme of the Job Security Agreement to sustain the position advanced by the Union. On that basis I cannot find that its interpretation is well established.

The Arbitrator appreciates the logic of the position advanced by Ms. Howell. It is arguable that equity would support the concept of granting a prior right to senior employees to elect to take a layoff payment where several employees make themselves eligible to do so. Such a provision, however, clearly implies additional cost to the Company, and is the kind of right normally arrived at by the give and take of collective bargaining between the parties and reflected in clear language. It cannot be lightly inferred where, as in the instant case, there is no language in the Job Security Agreement to support it. It should be noted that in a number of particulars, some of which are cited by the Union, that agreement specifically identifies areas where seniority can be exercised to the advantage of employees. Article 4.13 is not one of those provisions.

For the foregoing reasons the grievance must be dismissed.

October 16, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR