CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2750

Heard in Montreal, Wednesday, 12 June 1996

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA)

DISPUTE:

The Company's intention to give preference to employees of the Montreal CargoFlo facility in respect to an offer of separation opportunities made pursuant to the Employment Security and Income Maintenance Plan.

JOINT STATEMENT OF ISSUE:

On April 9, 1996, the Company issued notice pursuant to Article 8 of the Employment Security and Income Maintenance Plan of its intention to make certain operational and organizational changes with respect to the CargoFlo facility at Montreal.

Since these changes would otherwise result in an employment security liability, the Company intends to offer the separation opportunities incorporated into the Plan pursuant to the mediation-arbitration award of Mr. Justice George Adams. In offering these separation opportunities, the Company also intends to give preference to the employees at the CargoFlo facility.

The Union has taken the position that such preference, in favour of the CargoFlo employees, would be in contravention of the Transfer of Benefits provisions of the Plan, as set out in the Adams Award. The Union maintains that such separation opportunities must be offered "to senior employees in the bargaining unit in seniority order on the affected roster at the location of the affected employees."

The Company disagrees with the Union's interpretation of the requirements of the aforementioned Transfer of Benefits provisions.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) A. S. WEPRUK	(SGD.) J. B. BART
NATIONAL CO-ORDINATOR	MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

J. B. Bart	– Manager, Labour Relations – Marketing, Montreal
D. L. Bingeman	– National Manager, CargoFlo, Mississauga
R. F. Faucher	– Labour Relations Officer – Marketing, Montreal

And on behalf of the Union:

A. S. Wepruk	– National Coordinator, Montreal
R. Storness-Bliss	– Regional Coordinator, Vancouver
D. Olshewski	– Regional Coordinator, Winnipeg
D. Boiteau	– Local Chairperson, Local 4334, Montreal
J. Savard	– President, Local 4334, Montreal

AWARD OF THE ARBITRATOR

This arbitration concerns the application of article 9.1 of the CP-RCTC collective agreement, imposed upon these parties by Mr. Justice Adams in the award of the mediation-arbitration commission chaired by him, pursuant to the *Maintenance of Railway Operations Act, 1995*, issued June 14, 1995. That article reads as follows:

> **9.1** Where an employee with 8 or more years of Company CCS and who commenced service prior to January 1, 1994, is affected by a change pursuant to Article 1.1(a) of this Agreement and is unable to hold a permanent position in his bargaining unit or is required to relocate in order to hold a permanent position on his bargaining unit Article 4.2, Option 1, 2 or 3 **will be offered to senior employees in his bargaining unit in seniority order on the affected roster at the location of the affected employee.** [emphasis added]

The dispute between the parties concerns the meaning of the words "the affected roster" in the above noted provision. The Company seeks to eliminate a classification of employees who work in CargoFlo operations. It submits that that body of employees constitutes the appropriate "roster" for the purposes of the above provision of the parties' Employment Security and Income Maintenance Plan. The Company submits that that interpretation is essential to avoid inefficiencies in the ensuing shakeout of job displacements which, it submits, would result from the Union's interpretation. The Union submits that the term "roster" must be taken to refer to the seniority list of the employees, at a minimum, under the collective agreement in question and, alternatively and more broadly, to all bargaining unit employees, including employees under other collective agreements, including Collective Agreement 5.1.

The difficulty in this case, readily acknowledged by both parties, is that they are not the authors of the language whose intent and meaning is now in dispute. That, unfortunately, is the result of their apparent inability to have made their own agreement without the intervention of Parliament and a third party interest arbitrator.

Certain background facts do seem to be agreed. It would appear that the use of the term "roster" emerged in the negotiation of agreements at CP Rail as a means of reconciling the interests of several unions which were party to voluntary agreements made with that railway. In fact, the CP-RCTC agreement was also signed by the Canadian Signal and Communications System Council of the IBEW as well as by the Transportation Communications Union. The three unions have differing structures with respect to seniority lists and classifications. Each of the unions could, in subsequent negotiations, work out a more precise meaning of the word "roster" for their own purposes. Indeed, this appears to have been done in respect of the TCU which, in a subsequent agreement signed on September 28, 1995, obtained the following note in clarification of the transfer provisions of article 9, which reads as follows:

> In the application of articles 9.1 through 9.4, it was the intent of the parties to provide such transfer of benefit opportunities first to the affected Department on the affected seniority list, then if unused, to the affected seniority list.

As interesting as the background and history of article 9.1 of the CP-RCTC collective agreement may be, it is of limited utility to the Arbitrator in attempting to resolve the dispute at hand, given that the parties to this grievance have, to date, been unable to negotiate their own meaning. At most, the appearance of the word "roster" on the face of the article would seem to recognize that there may be differing classification, department and seniority structures to be accommodated in the application of the provision. The fundamental issue remains how that is to be done.

At the outset the Arbitrator has substantial difficulty with the suggestion of the Union that the phrase "on the affected roster" is to be taken to encompass all employees in the bargaining unit at the location, so as to include employees covered by another collective agreement, such as collective agreement 5.1. If that were the intention, the language could simply have been fashioned to read "will be offered to senior employees in his bargaining unit at the location of the affected employee." It does not read in that fashion, however, and some meaning must, in the end, be given to the words "on the affected roster".

The Arbitrator has equal difficulty with the argument of the Company that the term "roster" can fairly be interpreted to mean a classification of employees. Again, it would have been relatively simple for the parties to the CP-RCTC collective agreement to provide for the offering of the benefit options to employees "in seniority order in the classification at the location of the affected employee." Such language was not used, and in the circumstances, what is suggested is the intention of something broader than a mere employee classification.

Giving the word “roster” its normal linguistic meaning, it would appear to suggest a pre-existing list of employees which operates for collective bargaining purposes. I find it is unnecessary to interpret the concept of “roster” exhaustively for the purposes of this agreement, given that there is, in evidence, an identifiable, existing list of employees covered by the supplemental collective agreement known as the “Intermodal Services Seniority List - St. Lawrence Region.” That list encompasses all employees in both Intermodal and CargoFlo operations at Montreal. In my view it is that list which best coincides with the concept of “the affected roster” in the circumstances of this case.

While it is true, as the Company argues, that the above conclusion, which accepts the first argument advanced by the Union, may involve certain costs and arguably certain inefficiencies to the Company, it is important to bear in mind the substantial trade-offs in employment security protections surrendered by the unions in the original fashioning of the CP-RCTC collective agreement. The employer has gained substantially, in many respects, from the imposition by Mr. Justice Adams of the CP-RCTC collective agreement. Further, it remains open to the Company to improve upon that agreement, or to seek refinements of it, through constructive negotiations with the Union, as was also contemplated by Mr. Justice Adams. Absent such agreements, however, the Arbitrator is compelled to apply the language as it appears on its face.

In the result, the Arbitrator finds and declares that, in the application of article 9.1 of the CP-RCTC collective agreement, as part of the ESIMP of these parties, the Company is compelled to offer the options described within article 9.1 to senior employees within the bargaining unit in seniority order on the Intermodal Services Seniority List – St. Lawrence Region. The Arbitrator retains jurisdiction should this matter need to be spoken to further.

June 14, 1996

(signed) MICHEL G. PICHER
ARBITRATOR