CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2809

Heard in Montreal, Tuesday, 14 January 1997

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

Claim by the Union that the Company violated article 6.1 and article 7.5 of the Special Agreement dated May 1, 1996 when it unilaterally refused to approve work outside of CN at the location for Ms. L. Dennis, as referred to the Labour Adjustment Committee by the Union.

JOINT STATEMENT OF ISSUE:

On October 2, 1995 the Union was advised by Canadian National that the CN Roadcruiser bus operation in Newfoundland would be disposed of. All existing positions covered by the collective agreement, Agreement 6.1, would be abolished effective January 1, 1996.

On January 15, 1996 the Union was advised by Canadian National that they were not able to finalize the sale of CN Roadcruiser by January 29, 1996, and would be abolishing the existing positions on February 29, 1996.

In the interim, negotiations for a new collective agreement had been ongoing since 1993 and continued through to 1996.

On May 1, 1996 the Union and the Employer successfully concluded negotiations for a Special Agreement covering employees affected by the closure of Canadian National's Newfoundland operations. The Special Agreement superseded the terms and conditions of the Employment Security and Income Maintenance Plan in effect at the time.

The Special Agreement established a Labour Adjustment Committee (LAC) that would have full and unrestricted power and authority, and exclusive jurisdiction, to deal with and adjudicate upon all matters relative to the Special Agreement.

On June 15, 1996 Ms. Dennis elected option 6 (employment security). Ms. Dennis was not going to be subjected to relocation outside of Newfoundland, pursuant to article 6 hereof, until October 1, 1996.

On September 30, 1996 the Company agreed to give the employees on employment security, an additional three days starting October 1, 1996, meaning until October 3, 1996, to make their election regarding relocation outside of Newfoundland, pursuant to article 6.

On October 3, 1996 the Company agreed to give the employees on employment security an additional four days starting October 3, 1996, meaning until October 7, 1996, to make their election regarding relocation outside of Newfoundland, pursuant to article 6.

On October 3, 1996 a proposal was put forward by the Union at the LAC to approve work outside of CN for Ms. Dennis. The work outside is a position of Behavioural Aide/Respite Care Worker and the rate of pay is $8.11 per hour for 40 hours per week..

On October 4, 1996 the Company refused to approve the work outside CN.

The Union considers that Ms. Dennis' request to take a position outside of CN was by far reasonable, it should have been approved by the LAC.

The Company refused to approve the outside work requested by the Union at the LAC.

The Labour Adjustment Committee being unable to agree on work outside CNR, the Union is requesting that such grievance be referred to arbitration, in accordance with article 7.6 of the Special Agreement signed on May 1, 1996.

The Union grieved that Ms. Dennis is entitled to work outside of CN at the location before being required to relocate outside the location.

The Union grieved that Ms. Dennis is entitled to have the salary (work outside of CN) topped off to 90% of her basic weekly pay at CN and that the employment security period will not be reduced by the number of weeks of top-off received.

The Company declined the grievance.

FOR THE UNION:	**FOR THE COMPANY:**
(SGD.) R. PAGE	**(SGD.) R. BATEMAN**
EXECUTIVE VICE-PRESIDENT	**FOR: DIRECTOR, LABOUR RELATIONS**

There appeared on behalf of the Company:

D. S. Fisher	– Director, Labour Relations, Montreal
S. Grou	– Labour Relations Officer, Montreal

And on behalf of the Union:

P. Conlon	– Assistant Divisional Vice-President, Toronto
D. J. Bujold	– National President, Ottawa
R. Pagé	– Executive Vice-President, Montreal
N. Lapointe	– Assistant Divisional Vice-President, Montreal
W. Greenland	– Local Chairman, St. Johns

AWARD OF THE ARBITRATOR

This grievance arises within the terms of the Special Agreement concerning the closure of Newfoundland operations, dated May 1, 1996. The relevant provisions of that agreement are as follows:

> **6.1** An employee who has eight or more years of cumulative compensated service, and commenced service prior to January 1, 1994, will be required, on a continuous basis, to do the following in order to become and remain eligible for the benefits contained in this article 6.
>
> **(a)** accept work outside of CN at the location as determined by the Labour Adjustment committee; or
>
> **(b)** fill unfilled permanent vacancies in any bargaining units, non-scheduled or management positions at the location, region, system.
>
> **NOTE:** In the application of sub-paragraph 6.1(b), employees will be required to fill such unfilled positions in inverse order of seniority.
>
> **6.2 (a)** Prior to an employee being required to fill a permanent vacancy outside Newfoundland pursuant to article 6.1, the Labour Adjustment Committee will meet and review whether any alternatives are available.
>
> **(b)** Relocation benefits will be triggered only when permanent vacancies are filled.
>
> **(c)** Any outside earnings an employee was receiving prior to the date of the notice of permanent job abolishment will not be deducted from benefits received under this article. In all other cases, outside earnings will be deducted.

Article 7 of the Special Agreement establishes the Labour Adjustment Committee, comprised of two Company officers and two Union representatives. The parts of article 7 pertinent to this dispute are the following:

7.1 The Labour Adjustment Committee shall consist of two Company officers and two Union representatives. The Committee shall be co-chaired by the senior Company officer or designate and by the National President of the Union or designate.

NOTE: If the Union representatives are other than full time salaried representatives of the Union, compensation for actual wages lost and reimbursement for actual, reasonable expenses incurred in attending to Committee matters will be borne by the Company.

7.2 The Labour Adjustment Committee shall have full and unrestricted power and authority, and exclusive jurisdiction, to deal with and adjudicate upon all matters relative to this Special Agreement which do not add to, subtract from or modify any of the terms of this Special Agreement.

7.3 The Labour Adjustment Committee shall not have any power to deal with and adjudicate upon any benefits not specifically provided for in this Special Agreement nor in any subsequent agreement reached between the Company and the Union.

...

7.6 Except as otherwise provided in this Special Agreement, should the Labour Adjustment Committee be unable to agree on any question submitted relative to the provisions and benefits contained herein, the Union or the Company may request that such question be referred to arbitration in the Canadian Railway Office of Arbitration in accordance with the rules of that Office.

7.7 The arbitrator shall hear the dispute within 30 days from date of the request for arbitration and shall render the decision together with reasons therefor in writing within 30 days of the completion of the hearing.

7.8 The arbitrator shall have all of the powers of the Labour Adjustment Committee as set out herein. The arbitrator shall have no power to add to, subtract form or modify any of the terms of this Special Agreement. The decision of the arbitrator shall be final and binding.

At issue is whether the grievor should be compelled to accept a position as a carman at Toronto, assuming her qualifications, or whether she should first be approved for work outside the Company, as a Behavioural Aide/Respite Care Worker at a private institution, on a full-time, forty hour per week basis. The health care position which is available to the grievor pays substantially less than the grievor's CN wages as an intermodal clerk. The top-up cost which the Company would bear is not, therefore, insignificant, given the margin of difference between her hourly rate of $18.20 at CN, as compared with the health care worker's hourly rate of $8.11.

The record discloses that Ms. Dennis joined the Company in September of 1968, while still in her teens. She is obviously a long service employee who, it is agreed, has been a faithful and productive individual in the service of the Company. On the other side of the ledger, it appears that the work which she now wishes to undertake would bear little relation to the pursuit or perfecting of skills which would be of substantial value to the Company at some future time. Also, the marginal difference in her wage rate at the new position, as compared with her clerk's rate at CN, is not inconsiderable.

After careful consideration, the Arbitrator concludes that in this case the Company's position is well founded. The work available to the grievor is clearly not work which would be of future value to the Company, however worthy it may be from the standpoint of social utility. Of equal concern is the extent of the burden which would be borne by the Company, given that the top up cost to the Company substantially exceeds the hourly rate which the grievor would earn. While generalities should be avoided in dealing with issues of this kind, and each case must be determined on its own merits, the Arbitrator is not persuaded that the arrangement which the grievor seeks to have approved falls within the ambit of the obligations contemplated under article 6.1 of the Newfoundland Special Agreement.

For the foregoing reasons, on the understanding based on the representations of the Company's representative, that the grievor shall revert to her full options under the agreement, the grievance is therefore dismissed.

January 20, 1996

(signed) MICHEL G. PICHER
ARBITRATOR