CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2947

Heard in Calgary, Tuesday, May 12, 1998

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Interpretation and application of article 6.2(b) of the Job Security Agreement (JSA).

EX PARTE STATEMENT OF ISSUE:

The Company takes the position that for an employee to be eligible for relocation benefits as set out in article 6.2(b) of the JSA, he or she must move his or her family to the new location. The Brotherhood disagrees with this position.

The Union contends that: **1.)** There is no language in the JSA that requires an employee to relocate his or her family; **2.)** Articles 6.1 and 6.2(a) of the JSA set out the conditions that an employee must satisfy in order to be eligible for relocation benefits. This article makes clear that only the employee him or herself is required to relocate; **3.)** The Company's position violates article 6 of the JSA in general and articles 6.1 and 6.2 of the JSA in particular.

The Union requests the Arbitrator: to declare that the Brotherhood's position is correct and to order the Company to compensate all employees who were wrongfully denied article 6.2(b) benefits with such benefits, plus interest, immediately. The Brotherhood further requests that it be ordered that all affected employees be compensated for any and all financial losses incurred as a result of the Company's policy (including, but not limited to, loss of business income, loss of spousal income, legal fees, realtor fees, etc.).

The Company denies the Union's contentions and declines the Union's request.

FOR THE BROTHERHOOD:

(SGD.) J. J. KRUK
SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

R. M. Andrews — Manager, Labour Relations, Calgary
D. T. Cooke — Manager, Labour Relations, Calgary
S. J. Samosinski — Director, Labour Relations, Calgary

And on behalf of the Brotherhood:

D. W. Brown — Sr. Counsel, Ottawa
J. J. Kruk — System Federation General Chairman, Ottawa
Wm. Brehl — General Chairman, Revelstoke
P. Davidson — Counsel, Ottawa

AWARD OF THE ARBITRATOR

The instant dispute arises as a result of the Arbitrator's award in **CROA 2801**. In that case the Brotherhood grieved the Company's interpretation of article 6.2(b) of the Job Security Agreement (JSA) which reads as follows:

> **6.2** (**b**) Effective August 1, 1995, an employee who qualifies for relocation benefits under this article as per above and who is affected by an article 8 notice and has employment security, may elect in lieu of the relocation benefits provided elsewhere in this article, a lump sum payment as follows:

	WITHIN THE REGION	**ON THE SYSTEM**
For a Homeowner	$25,000.00	$50,000.00
For a Renter	$14,000.00	$29,000.00

In that case the Company took the position that an employee must sell his or her home and relocate their household to either owned or rented premises in their new location to be eligible for the lump sum payment provided within article 6.2(b). The Arbitrator rejected the Company's position, as relates to the requirement to sell a principal residence. The award reasons, in part, as follows:

> In the result, the intention of the document, as the parties did not have a common intention, must be gleaned from the language of the original memorandum of understanding, and the terms of article 6.2(b) as they now appear in the Job Security Agreement. Firstly, the Arbitrator is impressed with the somewhat greater clarity of the language of the memorandum of agreement of May 5, 1995. That agreement, which I am satisfied can be looked to as guidance to understand the provisions of article 6.2(b), specifically states that in order to qualify for the lump sum payment in lieu, an employee must actually relocate. It is a generally accepted principle of arbitral law that parties to a collective agreement are generally taken to negotiate the terms of their agreement against the background of prior published arbitral decisions. A prior decision of this Office, **CROA 1977**, dealt with the Job Security Agreement between the Brotherhood and the Canadian National Railway Company. In that case the parties were disagreed as to the meaning of the term "relocate" in article 7.7 of the Employment Security and Income Maintenance Plan (ESIMP) there under consideration. The Arbitrator rejected the argument of the Brotherhood that relocation meant simply the movement of a employee's job location from one place to another, independent of the location of his or her household. In this regard the following reasoning appears in the award:
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>> Article 6 of The Plan deals broadly with "relocation expenses" and covers such benefits as moving expenses, allowances for incidental expenses, transportation expenses for travel from an employee's former location to his new location and, among other things, leave to seek accommodation in the new location. There are, moreover, provisions for loss on the sale of an employee's home and for the moving of a mobile home residence. The entire scheme and thrust of the article, read in conjunction with Article 7, addresses the circumstances of an employee who is required to relocate in the sense of changing his principal place of residence. An employee who elects to keep his original place of residence may nevertheless work in another location and receive, pursuant to Article 6.10 of The Plan, a monthly cash allowance, payable for a maximum of twelve months. In the Arbitrator's view a person in that circumstance is not one who can, by a fair construction of the words of The Plan, be deemed to have "been required to relocate" within the meaning of Article 7.7.
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> In the following paragraph this Office then concluded: "The term 'relocate' within Article 7.7 of the ESIMP refers to the relocation of an employee's principal residence."
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> I am satisfied that the parties negotiated the provisions of their memorandum of agreement of May 5, 1995, and in particular the phrase "provided an employee actually relocates" in the knowledge of the above award, and with the intention of incorporating it into their agreement. In the result, I cannot accept the partial argument advanced by the Brotherhood, to the effect that a homeowner

> employee can claim the lump sum of $25,000.00 in lieu of other relocation benefits merely by virtue of his or her transfer of work to another location. Clearly, the employee in question must move his or her household, changing their permanent place of residence, to qualify for the allowance. That, of itself, does not mean that they must necessarily sell a home which they may have owned in the prior location of work. When regard is had to the language of the memorandum of agreement, against the background of **CROA 1977**, an employee who owns a house can move his or her household or family, taking up principal residence in the new location of work in rented accommodation. Such an individual would, in my view, qualify as an employee who "actually relocates", notwithstanding that he or she may retain ownership of a house in a prior location.

The instant dispute arises by reason of the inability of the parties to agree as to the meaning of the word "relocate" found within article 6.1 of the Job Security Agreement (JSA), being part of the eligibility criteria for payment of the lump sum. The Brotherhood submits that the term "relocate" must be interpreted as indicated in the award of the Arbitrator in **CROA 1977**. That case, which predates the contract language which is the subject of the instant dispute, involved the interpretation of what has come to be known as "Larson protection" in the collective agreement between Canadian National Railway Company and the Brotherhood. The Employment Security and Income Maintenance Plan there under consideration established certain conditions which, when met, protected an employee against the requirement "to relocate". The Brotherhood asserted that "relocate" in that circumstance did not mean a change of residence or domicile, but the mere transfer of an employee's job location, perhaps without any actual change of residence. The Arbitrator rejected the Brotherhood's position and concluded:

> … The term "relocate" within Article 7.7 of the E.S.I.M.P. refers to the relocation of an employee's principal residence.

For the purposes of the instant dispute, the Brotherhood submits that an employee may relocate, within the meaning of article 6.2(b) of the Job Security Agreement, where he or she continues to maintain a home, perhaps occupied by his or her family, in the employee's original location, but nevertheless takes on personal living accommodations at the new location to which the employee is compelled to transfer. The Brotherhood argues the example of an employee residing in Toronto whose job is abolished at Toronto, and who is compelled to transfer to a community in Northern Ontario, and whose family remains in the Toronto home, whether owned or rented. It submits that if the employee moves to rental or rooming accommodation in the new work location, perhaps commuting to Toronto on weekends, he or she has in effect relocated his or her principal residence, both within the meaning of article 6 of the Job Security Agreement and within the contemplation of **CROA 1977**.

The Company differs strongly in its view of these provisions. It submits that the lump sum payment was envisioned as a form of compensation for employees who are compelled to undergo the dislocation of moving their household as a result of a Company initiated technological, operational or organizational change. In support of its interpretation it draws to the Arbitrator's attention the provisions of article 6.10 of the Job Security Agreement, which reads, in part, as follows:

> **6.10 (a)** If an employee who is eligible for moving expenses does not wish to move his household to his new location he may opt for a monthly allowance of $190 which will be payable for a minimum of twelve months from the date of transfer to his new location. Should an employee elect to transfer to other locations during such twelve-month period following the date of transfer, he shall continue to receive the monthly allowance referred to above, but subject to the aforesaid 12-month limitation. An employee who elects to move his household effects to a new location during the twelve-month period following the date of his initial transfer will only be eligible for relocation expenses under this article for one such move and payment of the monthly allowance referred to above shall terminate as of the date of his relocation.

The Arbitrator finds the interpretation of the Company to be more compelling than that of the Brotherhood. It is significant to note that the lump sum payment provided for within article 6.2(b) of the JSA is, it is not disputed, intended as an alternative to the payment of other relocation benefits provided for under article 6. When regard is had to those provisions, it is apparent that the parties have had in mind as relocation benefits amounts payable to offset the cost and dislocation of moving an individual's original household. In that regard articles 6.3 through 6.9 variously address the payment of door-to-door moving expenses for an individual's household goods and automobile, including insurance and storage, incidental expenses, funds for temporary living accommodation for the employee, including separate amounts for dependants, an allowance for driving the employee's vehicle to the new location, a period of paid leave to seek new accommodations, reimbursement for a loss on the sale of a private home

and payment of the cost of moving a mobile home occupied as a year round residence. Significantly, article 6.10(a) provides a monthly commuting allowance for "… an employee who is eligible for moving expenses [who] does not wish to move his household to his new location …". In addition, article 6.11 deals with reimbursement for the cost of terminating an unexpired lease. When these provisions are read together, their obvious thrust is that an employee has two options: move his or her household, or decline to do so and receive the monthly allowance provided, for a period of twelve months.

On what basis would the parties have intended that an employee could opt for the lump sum payment, where the employee chooses not to move his or her household, and follows a course of action which would otherwise attract no more than the monthly commuter allowance for the period of one year? It does not appear disputed that part of the rationale for the lump sum payment is to relieve both the Company and employees who choose to relocate their households from the burden of gathering receipts and maintaining accurate records as to the precise amounts of reimbursement to which an employee will be entitled in respect of the move of his or her household to the new location. It is far from clear to the Arbitrator, however, that the parties would have intended by the lump sum option to provide to employees who choose not to relocate their family households the obviously generous lump sum payments provided for under article 6.2(b) of the JSA. Moreover, it is difficult to understand on what basis different lump sum amounts would be payable to employees who opt to commute, be it on a weekly basis or otherwise, from a home which they own, as compared to a home which they rent. In either case the cost of commuting and the potential expense of assuming rental or rooming accommodation at the new location are the same. The very differential in the amounts payable suggests that the larger lump sum is intended to compensate, in part, for the greater burden of an employee who moves his or her household from a fully owned residence, or where, as indicated in **CROA 2801**, he or she may continue to bear the risk and liability of ownership of the original residence.

The Arbitrator also considers it instructive that the parties have agreed that to be eligible for the lump sum payment provided under article 6.2(b) of the JSA the employee must, as part of the eligibility requirements, be a householder, that is to say a person who owns or occupies unfurnished living accommodation. On what basis would the parties have intended that an employee who resides in the home of his or her parents, or in the home of a sibling, for example, and moves to rooming accommodation at a distant location, should have no entitlement to a lump sum payment, while a renter or home owner who maintains their household home or apartment at the original location, and similarly takes on rooming accommodation at the new location, incurring no greater costs, is nevertheless entitled to the payment of a lump sum of many thousands of dollars? The Arbitrator can see no purposive rationale for any such distinction, unless it is that the lump sum payment is to relieve against the burden of moving the individual's household and family.

That is precisely the conclusion reflected in the award of the Arbitrator in **CROA 2801**. While that award confirms that an employee might retain the original dwelling home, or indeed leasehold apartment, and nevertheless be entitled to the payment of the lump sum, an essential condition of qualification is that the employee relocate their principal residence, which in the context of article 6 of the Job Security Agreement, means relocating their household and family. While there may obviously be various scenarios which present themselves where some members of a family may choose to remain behind in the prior location, so that certain cases may have to be examined on an individual basis, as a general rule the relocation of a household and family is fairly easily understood and recognized.

For all of the foregoing reasons the Arbitrator finds and declares that the interpretation of the Company in respect of article 6.2(b) of the Job Security Agreement, as relates to the requirement to move a household and family as a prerequisite to the payment of the lump sums provided therein is correct.

May 19, 1998

(signed) MICHEL G. PICHER
ARBITRATOR