# CANADIAN RAILWAY OFFICE OF ARBITRATION

# CASE NO. 3070

Heard in Montreal, Tuesday, 12 October 1999

concerning

## CANADIAN PACIFIC RAILWAY COMPANY

and

## BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

## EX PARTE

### DISPUTE:

Claim on behalf of Mr. P. Arseneau and Mr. V. Butler.

### BROTHERHOOD'S STATEMENT OF ISSUE:

In January 1995, the grievors were temporarily laid off from their permanent machine operator positions. To date the grievors have still not been recalled to these positions. In view of this, the Union took the position that the temporary layoffs must now be considered as permanent job abolishments.

The Union contends that: **(1.)** The Company was, in the circumstances, required to serve a notice pursuant to the terms of article 8 of the Job Security Agreement; **(2.)** The Company's failure to serve proper notice constituted a breach of article 8.1 of the Job Security Agreement.

The Union requests that the Company serve the appropriate article 8 notice immediately and that the grievors be made whole with full compensation for all losses incurred as a result of this matter.

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:

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| D. Freeborn | – Labour Relations Officer, Calgary |
| E. J. MacIsaac | – Labour Relations Officer, Calgary |
| R. M. Andrews | – Manager, Labour Relations, Calgary |
| D. T. Cooke | – Manager, Labour Relations, Calgary |
| S. J. Samosinski | – Director, Labour Relations, Calgary |
| G. D. Wilson | – Counsel, Calgary |

And on behalf of the Brotherhood:

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|---|---|
| J. J. Kruk | – System Federation General Chairman, Ottawa |
| D. J. McCracken | – Federation General Chairman, Ottawa |
| D. W. Brown | – General Counsel, Ottawa |
| P. Davidson | – Counsel, Ottawa |
| G. D. Housch | – Vice-President, Ottawa |

## AWARD OF THE ARBITRATOR

On January 4, 1995 two employees received four day notices of temporary layoff from their B&B machine operator positions on the Calgary seniority territory. It appears that they operated a bobcat and a truck. It is common ground that the temporary layoff became permanent, as the equipment in question has been re-assigned for the use of other employees. The Brotherhood asserts that as the reductions in question concern the elimination of permanent year round positions, the Company was under an obligation to issue a notice of a technological, operational or organizational change under the provisions of article 8 of the Job Security Agreement (JSA). The definitions section of the JSA contains the following:

> **(m)** "Technological, Operational or Organizational Changes" means as follows:
>
> "Technological": the introduction by the employer into his work, undertaking or business of equipment or material of a different nature or kind than that previously utilized by him in the operation of the work, undertaking or business; or
>
> "Operational or Organizational": a change in the manner, method, procedure or organizational structure by which the employer carries on the work, undertaking or business not directly related to the introduction of equipment or material provided that any such change is not brought about by:
>
> **(i)** a permanent decrease in the volume of traffic outside of the control of the company; or
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> **(ii)** a normal reassignment of duties arising out of the nature of the work in which the employee is engaged; or
>
> **(iii)** a normal seasonal staff readjustment.
>
> **Note:** Any permanent shutdown or permanent partial shutdown of an operation, facility or installation, shall be considered as a technological, operational or organizational change. Any permanent Company-initiated changes (excluding changes which are brought about by general economic conditions) which result from the reduction or elimination of excess plant capacity shall also be considered as technological, operational or organizational changes.

Article 8.1 of the JSA reads as follows:

> **8.1** The Company will not put into effect any technological, operational or organizational change of a permanent nature which will have adverse effects on employees without giving as much advance notice as possible to the General Chairman representing such employees or such other officer as may be named by the Union concerned to receive such notices. In any event, not less than 120 days' notice shall be given, with a full description thereof and with appropriate details as to the consequent changes in working conditions and the expected number of employees who would be adversely affected.

In these proceedings the burden of proof is upon the Brotherhood. It must establish, on the balance of probabilities, that the Company implemented a technological, operational or organizational change which resulted in the abolishing of the positions held by the grievors. In approaching these provisions it is important to understand certain fundamental concepts. If the parties had intended that the permanent abolishing of an employee's position, without more, constitutes an operational or organizational change, they could have said so in clear and unequivocal language within their Job Security Agreement. They have not done so. On the contrary, the Job Security Agreement is structured in such a way as to recognize that temporary layoffs may be for a considerable period of time, and indeed that permanent layoffs may be implemented as cost cutting measures without necessarily constituting operational or organizational change.

It is understandable that an individual employee might feel that the permanent elimination of his or her job constitutes organizational change. However, as the definitions section of the JSA indicates, whether a change is operational or organizational must be analysed in a much broader perspective, having regard to the "manner, method, procedure or organizational structure" within which work is carried out by the Company. Further insight is gathered from the "Note" to the definition section which makes reference to the shutdown of all or part of an operation, facility or installation. Nowhere in the scheme of the Job Security Agreement is there any suggestion that the elimination of a job as a general cost cutting measure, without any fundamental change to the Company's

operations or organizational structures, of itself requires the issuing of a notice under article 8 of the JSA, with all of the attendant procedures and substantive protections which that involves.

While the Brotherhood's concern for the protection of its job complement is understandable, its position cannot be sustained on the facts in this case. In the case at hand the evidence of the Company indicates that a general directive for cost cutting measures was in effect in late 1994, apparently as a result of negative financial results in the fourth quarter of that year. As a result, local managers were issued directives to reduce costs, including labour costs, wherever possible. It is within that framework that the grievors' jobs were eliminated. In the Arbitrator's view the circumstances disclosed would fall within the parenthetical contained within the note, and constitute changes brought about by general economic conditions. As reflected in prior awards of this Office, such changes do not constitute operational or organizational change within the meaning of the JSA (see **CROA 3056** and **1410**).

The grievance must therefore be dismissed.

October 19, 1999

**(signed) MICHEL G. PICHER**
**ARBITRATOR**