CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3235

Heard in Montreal, Thursday, 13 December, 2001

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Claim on behalf of employees employed at the Transcona Rail Yard and Butt Welding Plant.

BROTHERHOOD'S STATEMENT OF ISSUE:

On September 30, 1999, the Company served an article 8 notice of its intention to reorganize the Transcona facility and to reduce the number of positions there by twenty-seven (previously there were forty-nine). On January 31, 2000, the Company held a town hall draft meeting with all of the facility's employees. Of the twenty-two employees *not* named on the notice, thirteen took buy-out packages. This resulted in thirteen, more junior employees who *were* named on the notice to be called to fill those positions. Of the remaining twenty-seven who were named on the notice, thirteen took packages and one went on ES. Thus, of the twenty-two employees remaining at the facility, thirteen held their positions because thirteen more senior employees (who were not named on the notice) decided to take packages. This is the way matters stood until the late summer and fall of 2000, when a number of the remaining twenty-two employees at the facility were laid-off. At that time the Brotherhood took the position that these laid-off employees should be treated as having ES status. The Company disagree.

The Union contends that: **(1.)** The employees named on the notice all had their positions abolished. The positions held by the thirteen employees after the reorganization cannot be said to have been acquired pursuant to article 7.3(a)(1) of the JSA since all of those positions were, at the time of the abolishments, held by more senior employees. **(2.)** In view of this, the Company is in violation of article 7.12 of the JSA because these thirteen employees, who had their positions abolished and who were unable to displace anywhere, were recalled to fill positions that were only apparently permanent in nature. They are, therefore, entitled, when laid off, to revert back to ES status.

The Union requests that the Company be ordered to place the grievors on ES status when laid off and that these same employees be fully compensated for all financial losses incurred as a result of the Company's violation.

The Company denies the Brotherhood'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:

E. J. MacIsaac	– Manager, Labour Relations, Calgary
M. G. DeGirolamo	– Assistant Vice-President, Industrial Relations, Calgary
D. E. Freeborn	– Labour Relations Officer, Calgary

And on behalf of the Brotherhood:

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

AWARD OF THE ARBITRATOR

The position advanced by the Brotherhood is that the original article 8 notice of September 30, 1999, and the ensuing reorganization of the work force, which involved a substantial reduction in the number of employees in the Transcona Rail Yard and Butt Welding Plant, constituted a technological, operational and organizational (TO&O) change which resulted in the abolishment of all positions. The Brotherhood asserts that in effect the employees who now remain were compelled to bid on positions which, in light of subsequent developments, it maintains do not constitute permanent positions. On that basis it asserts that they have been placed in temporary positions which are subject to layoff, and are therefore entitled to the protections of employment security (ES) under the Job Security Agreement (JSA).

Certain of the background facts to this grievance are related in prior awards of this Office, **CROA 3041** and **CROA 3086**, and need not be repeated here. Suffice it to say that to implement the change whereby the Butt Welding Plant was essentially assigned to the external contractor Chemetron, with CP Rail remaining the employer of the bargaining unit employees, a "draft" process was conducted on January 31, 2000 in Winnipeg, to determine within one single process which employees would take severance or retirement package opportunities, which would go on ES and which would remain as employees within the yard and plant. By that process the original complement of forty-nine employees was reduced to the existing number of twenty-two. In light of the overall reorganization the Arbitrator has no difficulty with the characterization of the Brotherhood to the effect that what resulted was tantamount to filling twenty-two newly created positions.

The issue is whether the twenty-two employees in fact took permanent positions or, as the Brotherhood contends, were in reality laid off and then placed in temporary positions. If the latter situation obtains they would arguably be entitled to the protection of employment security in the event of a layoff, as contemplated by the terms of the JSA.

Having regard to the evidence adduced, the Arbitrator cannot accept the submission of the Brotherhood. Its argument is based, in essence, on the fact that the twenty-two employees who remain in the yard and plant have been subject to periodic layoffs, of varying duration, since the change implemented after January of 2000. It is true that layoffs have affected those individuals, as demonstrated within the material submitted by the Company. However, layoffs were a relatively common occurrence within the yard and plant over the years prior to the TO&O change implemented in January of 2000. While the evidence does disclose that the number of track miles produced in the plant declined in the years 2000 and 2001, as compared with the three prior years, it is also clear that layoffs were a normal feature in the work place before the TO&O change. For example, in 1999 the employees who remained in the work place suffered layoffs averaging six weeks per employee. In 2000, after the change, the same group averaged laid off time of four weeks per employee.

The Arbitrator understands the argument of the Brotherhood, which is that prior to the TO&O change the most senior employees in the plant did not face any significant level of layoffs, and therefore the same ratio of layoff free employment should continue following the change. However, I am aware of no provision of the JSA, or of the collective agreement, which would prohibit that result in the wake of a TO&O change. I find it difficult to conclude that what, it appears agreed, were permanent positions subject to occasional layoff before the TO&O change must now be characterized as temporary positions after the TO&O change, so as to trigger the application of article 7.12 of the JSA. That provision reads as follows:

> Where an employee is recalled within his own bargaining unit on account of an apparently permanent increase in workload, and where such workload increase turns out to be temporary, and

> there is a consequent staff reduction within one year of the original recall, the employee will revert back to ES status. It is understood that in the application of this provision, the number of individuals going onto ES status following a staff reduction will be no greater than the numbers recalled initially from ES status as a result of the in crease in workload.

The Arbitrator is persuaded that the interpretation of the foregoing article advanced by the Company is more compelling. It plainly contemplates the recall to work of an employee who was effectively laid off for an indeterminate period as a result of a TO&O change, and is at home without work, with the full benefit of ES protection. That does not, in my view, fairly describe the status of the employees who are the subject of this grievance. They were, in fact, never laid off. More correctly, they were reassigned as part of the town hall meeting "draft" which took place to implement the article 8 notice properly given to the Brotherhood by the Company. There was no hiatus of employment. The fact that the permanent positions which were created by that process may be less secure, or more vulnerable to layoff than may have been the case for the senior-most positions in the plant prior to the TO&O change, does not alter the status of the individuals involved. By any fair reckoning, it cannot be said that they were laid off, placed on ES and eventually recalled to the workplace in the manner contemplated by article 7.12 of the JSA.

The Arbitrator can appreciate the concerns which motivate the Brotherhood's grievance to the extent that layoffs are now a more common occurrence among the overall work force. I must, however, apply the JSA and the collective agreement as I find them. The Brotherhood did not, as part of the TO&O process, negotiate provisions that would immunize any position from possible layoffs. Obviously, nothing in this award should be taken as limiting the rights of the Brotherhood in relation to what it alleges are other aspects of change which negatively impacted the volume of work at the yard and plant in Transcona. Those matters, it appears agreed, are not part of this dispute.

For the foregoing reasons the grievance must be dismissed.

December 19, 2001

(signed) MICHEL G. PICHER
ARBITRATOR