

**CANADIAN RAILWAY OFFICE OF ARBITRATION  
& DISPUTE RESOLUTION**

**CASE NO. 3514**

Heard in Montreal, Tuesday, 11 October 2005

Concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE  
MAINTENANCE OF WAY EMPLOYEES DIVISION**

**DISPUTE:**

Interpretation and application of Article 7.5(c) of the Job Security Agreement.

**JOINT STATEMENT OF ISSUE:**

Members of the bargaining unit who were previously adversely affected by a change implemented pursuant to Article 8 of the Job Security Agreement (JSA) were recalled from employment outside the Company to fill permanent CAW positions. The Union took the position that such a recall was a violation of the collective agreement and filed a grievance.

The Union contends that: **(1.)** Article 7.5(c) of the Job Security Agreement (JSA) provides that an employee working outside the Company shall be subject to recall only to a permanent position "on his former BST" (i.e. Basic Seniority Territory) ; **(2.)** A BST is not an independent geographical entity but rather, is a creation of the collective agreement. As such, the concept of the BST cannot possibly extend to positions in another bargaining unit that are covered by a different collective agreement. To put it another way, a BST has no existence outside of the collective agreement that creates it. Thus, when article 7.5(c) of the JSA states that an employee must accept recall to a permanent position within the scope of the collective agreement that created the BST. **(3.)** The Company's actions in this case are in violation of article 7.5(c) of the JSA.

The Union requests that the Company be prohibited from requiring any ES employees working outside the Company to fill any position other than a permanent position in the TCRC/MWED bargaining unit on the employee's former BST. The Union further requests that it be ordered that any employee who has been adversely affected by the Company's policy be compensated for all losses incurred as a result thereof.

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

**FOR THE UNION:**

**(SGD.) Wm. BREHL**  
PRESIDENT, TCRC/MWED

**FOR THE COMPANY:**

**(SGD.) S. SEENEY**  
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

- S. Seeney – Manager, Labour Relations, Calgary
- S. Samosinski – Director, Labour Relations, Calgary
- E. MacIsaac – Manager, Labour Relations, Calgary

And on behalf of the Union:

- D. Brown – TCRC, Staff, Ottawa
- Wm. Brehl – President, TCRC/MWED, Ottawa

**AWARD OF THE ARBITRATOR**

The Company noted that it first implemented a Job Security Agreement in 1964.

NOTE: "Basic seniority territory" as referred to in Clause 1, paragraph (d) and Clause 3, paragraph (c) of this Appendix "B" shall be defined in each of the relative collective agreements and shall be the seniority territories in effect for the various groups under the relative collective agreements as at January 1st, 1964, except that in those agreements where "point" or "terminal seniority" existed on January 1st, 1964 the "basic seniority territory" shall be the Area or equivalent in the case of the Canadian National Railways and Superintendent's Division or equivalent in the case of the Canadian Pacific Railway."

The Company pointed out that, later, during the 1994 round of negotiations, it served demands to significantly alter the provisions of the employment security (ES) scheme. One of the revised provisions arising out of the 1994-1995 round of negotiations was the obligation of an ES employee to accept work outside the Company. It is the Company's position that ES status employees, working for an outside employer, are subject to recall to vacant permanent positions not only to their own bargaining unit but also to any other bargaining units on their BST. The Union maintains that although the BST has a geographical component, it is first and

foremost a creation of the collective agreement and has no applicability outside the collective agreement. The Union points to the wording of article 7.5(c) and in particular the highlighted portion herein:

### 7.5 Employment Outside the Company

...

**(c)** An employee accepting employment pursuant to this Article 7.5 shall not be subject to call for temporary vacancies by the Company on those days that he is employed by the outside Employer. When such employee is working for an outside employer on a less than 5 day per week basis, he shall not be called by the Company on a frequency that would result in his working a total of more than 5 consecutive days in a calendar week. **Such employee shall, however, be subject to recall, pursuant to the provisions of this Agreement, for permanent vacancies on his former BST.** An employee failing to answer recall shall forfeit all entitlement to ES and shall forfeit his seniority within the BMW.

[emphasis added]

In this case, the Company bulletined a number of carperson positions and engine attendant positions in its Canadian operations. These positions were for employees represented by the CAW. After the bulletin process was complete, a total of three carperson positions and one engine attendant position remained unfilled. The three carperson positions were at the Hagey Yard which is located at mileage 5.9 Waterloo Subdivision, situated on the London, Ontario BST. The unfilled engine attendant position was located in Lethbridge, Alberta, situated on the Lethbridge BST. These positions remained unfilled after being bulletined within the CAW. Subsequently, the Company recalled four TCRC/MWED represented ES employees to fill these positions. One of these employees was at home and in receipt of ES benefits and was recalled under the terms of JSA article 7.3(b)(1). The other three ES status employees were recalled under the terms of JSA article 7.5(c).

The crux of this dispute is whether or not a BST should be considered as an independent geographical area or whether it is linked exclusively to an employee's own

collective agreement. As the Company pointed out, the term "territory" in itself denotes a defined geographic area and Appendix B of the collective agreement clearly defines all of the various seniority territories in existence at Canadian Pacific Railway. In the view of the Arbitrator, the words "on his former BST" do not on their face or when read in the context of the entire provision restrict the filling of vacant positions exclusively to those positions within the scope of the collective agreement that created the BST. That type of provision, which is a limiting provision, would require specific language restricting the BST to positions within the employees' collective agreement.

The employer's financial burden is significant. It tops up an employee's outside earnings to 90% of his or her previous bargaining unit position earnings. In exchange, employees are expected to participate in lessening the financial burden on the employer by accepting work where it is available-even outside the confines of positions found within their particular collective agreement. Given the financial benefit conferred on employees through the JSA, it would take clear and unambiguous language to limit the BST to only those positions found within the collective agreement. As Arbitrator Devine pointed out in **Re Cardinal Transportation B.C. Inc. and Canadian Union of Public Employees, Local 561**, (1997) 62 L.A.C. (4th):

Where a monetary benefit is asserted it normally falls to the Union to show in clear, specific and unequivocal terms that the monetary benefit is part of the employees' compensation package. Such an intent is not normally imposed by inference or implication.

In summary, it is the view of this Arbitrator that the parties have bargained a scheme that provides top-up salary benefits in exchange for an employee's commitment to accept employment both within and outside the ambit of their own collective agreement.

For these reasons, the grievance is dismissed.

October 17, 2005

**(signed) JOHN M. MOREAU, Q.C.**  
ARBITRATOR