CANADIAN RAILWAY OFFICE OF ARBITRATION

& DISPUTE RESOLUTION

CASE NO. 4174

Heard via conference call, Thursday, 10 January 2013

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE
RAIL CANADA TRAFFIC CONTROLLERS

There appeared on behalf of the Company:

D. Freeborn	– Manager, Industrial Relations, Calgary
R. Hample	– Counsel, Calgary
M. Thompson	– Labour Relations Officer, Calgary

There appeared on behalf of the Union:

S. Brownlee	– General Chairwoman, Stony Plain

INTERIM AWARD OF THE ARBITRATOR

The Union seeks interim relief from the Arbitrator. It asks the Arbitrator to direct the Company to withhold the implementation of a closure of operations at the Rugby Interlocking Tower in Winnipeg beyond the intended closure date of that facility which the Company has established to be January 24, 2013. It appears to be common ground that the Company's action will result in the abolishment of five positions currently occupied by TCRC/RCTC members.

The thrust of the Union's position is that relief should be provided under section 60 (1) (a) (ii) of the *Canada Labour Code* by reason of the impact of the Company's initiative on the employees at Winnipeg. It would appear that for some, if not all, of the

employees a possible outcome might be relocation to Calgary, with a commensurate exercise of the seniority of the employees. The Union's representative submits that it is unfair to require the employees to make such elections and undertake such a relocation without the knowledge of the rights and protections which may otherwise be afforded to them under the Income Security Agreement (ISA), as might result from either a negotiated agreement between the parties or an award of a board of Arbitration constituted under the terms of the ISA.

The Company's representatives submit that these considerations should not outweigh the Company's ability to effectively terminate operations at the Rugby Interlocking Tower in Winnipeg as scheduled, in January of 2013. Its counsel submits that the fact that one or more employees may be unhappy with the prospect of uncertain options following the closure of their office should not give them a right to effectively freeze the Company's options as to the location of its operations until such time as the dispute may be resolved. Implicit in the Company's position is that in the fullness of time, under the provisions of the ISA, the employees will receive the protections provided within that document, including any negotiated or arbitrated enhancements, and their interests will to that extent be protected.

How does the balancing of interests resolve itself in this case ? In my view there is greater prejudice to the Company by effectively freezing its ability to implement the change it seeks to fashion, for an indefinite period until such time as the dispute is resolved. The employees know, or reasonably should know, that their positions at Winnipeg are being abolished and that they will be called upon to exercise certain options which flow from that fact. While it may be that they would exercise their options

with a greater degree of comfort with the hindsight of a negotiated or arbitrated ISA outcome, the fact remains that they do not make their choices entirely in the dark. The fundamental benefits provided for in the ISA itself are obviously known to them, and while it may be that certain other issues may have to await resolution through negotiation or arbitration, making choices with a degree of uncertainty is not uncommon for employees governed by Collective Agreements, particularly in situations prompted by job abolishments. Certain collective agreements within the industry stipulate that material change cannot be implemented until such time as the negotiation and arbitration process is exhausted. That is not the case with respect to the instant Collective agreement. The parties have contemplated that, as a general rule, material change outcomes, whether negotiated or arbitrated under the ISA, may well not be known until some time after the implementation of a material change. In my view there is nothing extraordinary or particularly prejudicial demonstrated in the instant case so as to take the grievance at hand out of the application of that general rule.

For all of these reasons I am satisfied that this is not an appropriate case for the granting of interim relief and the making of an extraordinary direction to the Company to continue operations which it would otherwise cease at Winnipeg, to some indefinite date in the future. The Union's request is therefore denied.

January 14, 2013

(signed) MICHEL G. PICHER
ARBITRATOR