CANADIAN RAILWAY OFFICE OF ARBITRATION

& DISPUTE RESOLUTION

CASE NO. 4262

Heard in Calgary, November 14, 2013

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The application of the Income Security Agreement and Appendix A-2 of the RTC Collective Agreement with regard to the Company's August 28, 2013 notice of a Technological, Operational and Organizational Change.

JOINT STATEMENT OF ISSUE:

On August 28, 2013 the Company issued notice of a Technological, Operational and Organizational Change ceasing operations at the Montreal Operation Centre and resulting in the movement of those positions to Calgary on or about January 6, 2014.
There are 2 issues in dispute with regard to the above stated notice:

1. The Company's interpretation and application of Appendix A-2 of the Collective Agreement and denial of benefits as outlined in the Income Security Agreement
2. The language and intent of Article 5 of the Income Security Agreement, specifically Article 5.3 (b)

The Union contends that Appendix A-2 is supplemental to the Income Security Agreement and all provisions of the Income Security Agreement are applicable. The Union contends that Article 5 of the Income Security Agreement is applicable to any employee with 2 or more years of service and that specifically Article 53(b) Is subject to a rectification of language to include those employee's subject to notice under Article 1.1(a) as was the intent at the time the Article was written. The Union requests a direction that the Company abides by the provisions of the Income Security Agreement and Appendix A-2 and a direction that the language in Article 5.3(b) be rectified to include notice under Article 1.1(a) as per the intent at the time the article was written.

The Company disagrees with the Union's contentions, in all of the circumstances, and denies the Union's requests.

FOR THE UNION:
(SGD.) S. Brownlee
General Chairperson

FOR THE COMPANY:
(SGD.) D, Freeborn
Director Labour Relations

There appeared on behalf of the Company:

M. Moran	– Manager Labour Relations, Calgary
D. Guerin	– Director Labour Relations, Calgary
B. Sly	– Director Labour Relations, Calgary
E. Tyminski	– Labour Relations Officer, Calgary

There appeared on behalf of the Union:

D. Ellickson	– Counsel, Caley Wray, Toronto
S. Brownlee	– General Chairperson, Stoney Plain
C. Clark	– Vice General Chairman, Montreal
V. Linkletter	– Jr. Vice General Chairperson, Calgary

AWARD OF THE ARBITRATOR

The facts in relation to this grievance are not in substantial dispute. As part of the move of its RTC functions from Montreal to Calgary, the Company issued a technological, operational and organizational change notice to the Union on August 28, 2013. It is common ground that the 41 RTC's affected by the notice at the Montreal Operation Centre, or at least some of them, either found work outside the Company, retired or took the benefit of bridging to their pension entitlement. However, the parties' discussions with respect to finalising the treatment of all affected employees did not result in an agreement. Two issues remain outstanding, as identified in the joint statement of issue.

Appendix A-2 of the collective agreement is entitled "Benefits for Specific Changes Under Income Security Agreement." Its preamble states:

> It is agreed that where any train control system, which is computer assisted or otherwise computerized, is introduced, Section 1 and 2 of this Appendix will apply. This Appendix shall also apply where a Consolidated RTC Centre is established involving two or more RTC Centres.

The Appendix provides protection to employees, dealing with such issues as the employees' loss on the sale of a home, separation allowances and early retirement. As reflected in an ad hoc award of this Arbitrator between these parties dated April 21, 1992, Appendix A-2 of the collective agreement is acknowledged to be in addition to and complementary to the ISA.

The position of the Company is that Appendix A-2 is a document which should apply in the instant case, dealing as it does with establishing a consolidated RTC Center by the merging of two or more RTC centers. That, the Company submits, is precisely what occurred with the move of the Montreal RTC Center into a merger with operations in Calgary. As its representatives stress, Appendix A-2 was specifically fashioned to deal with that situation, limiting itself to providing two options to employees: relocation to the new consolidated RTC Center or the option of resignation and the receipt of severance payments. In the Company's view lay-off status is not an option contemplated under Appendix A-2. The Company does acknowledge that in the event there were insufficient jobs at a consolidated RTC center for all of the employees displaced by the change the benefits under Article 4 of the Income Security Agreement, such as early retirement and bridging options, might be made available. That eventuality, its representatives stress, has not arisen in the instant case. Further, the Company emphasizes the language of Appendix A-2 which expressly provides:

> "Notwithstanding any provisions of the Collective Agreement or Income Security Program to the contrary, the provisions of this Section 4 shall apply to Consolidations of RTC Centers".

Very simply, the position of the Company is that as the change here under consideration involves the consolidation of RTC Centers, it is the provisions of Appendix A-2 of the Collective Agreement and not the provisions of the ISA which come into play. In support of that approach its representatives further note that it would be illogical to apply the ISA which, for example, contains layoff benefits, to the extent that there is no prospect of recall for the Montreal employees displaced by reason of the consolidation of the Operation Centers into Calgary.

Alternatively, the Company submits that if the ISA were to apply, the employees with eight or more years of Cumulative Compensated Service (CCS) are not, in any event, entitled to supplemental unemployment benefits given the language of Article 5.3 of the ISA which reads as follows:

> 5.3 (a) Employees who have less than 8 years of CCS and who are affected by either Article 1.1 (a) or (b), will be allowed a gross layoff benefit credit of five weeks for each such year. This will be calculated from the last date of entry into the company's service as a new employee.
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> (b) Employees who have 8 or more years of CCS, and who are affected by Article 1.1 (b), will be allowed a gross layoff benefit credit of six weeks for each such year. This will be calculated from the last date of entry into the Company's service as a new employee.

The Company notes that sub-paragraph (b) of the foregoing provision contains no reference to employees affected by an Article 1.1 (a) notice of T.O. & O. change. Those employees could not, therefore, in the Company's view benefit from the layoff benefit credit there contemplated.

The Union alleges that the absence of the reference to Article 1.1(a) which appears in sub-paragraph (b) of Article 5.3 of the ISA is an inadvertent error committed by the parties in the final formulation of the language of their collective agreement. The Company's representatives stress that that language has formed part of the ISA since 1995 and has been renewed without change by the parties through six consecutive rounds of bargaining. Given that the language has been retained for close to twenty years, without any attempt on the part of the Union to change it, the Company submits that it must be viewed as reflecting the ultimate agreement and understanding of the parties.

The position of the Union is that in the instant case the provisions of Appendix A-2 apply, but so do those of the ISA. Its counsel points the Arbitrator to the extensive history of the negotiation of the provisions of Article 5.3 (a) and (b) of the ISA. He submits that that history reflects the original intention of the parties that sub-paragraph (b) of Article 5.3 of the ISA was intended to include reference to employees being affected by either Article 1.1(a) or Article 1.1 (b), and that the omission of any reference to change notices under Article 1.1 (a) in Article 5.3 (b) was by inadvertence. On that basis he submits that the Arbitrator should examine the history of these provisions to determine the true intention of the parties or, alternatively, rectify the language in keeping with the jurisdiction of labour arbitrators, as reflected in the decision of this Arbitrator in CROA 3101.

Counsel for the Union stresses that if the interpretation of Article 5.3 of the ISA advanced by the Company should succeed, an absurdity would result. Notably, he stresses, employees with less than eight years of CCS would find themselves receiving a greater benefit than employees with eight or more years of CCS in the case of an Article 1.1 (a) notice, such as in the case at hand.

I turn to consider the merits of this dispute. In doing so, I consider it critical to pay close attention to the intention of the parties as reflected in their Collective Agreement and ISA documents. As a starting point, it is important to examine closely the provisions of Section 4 of Appendix A-2 of the Collective Agreement, bearing in mind that that is the agreement intended to apply "…where a consolidated RTC Center is established involving two or more RTC Centers." Section 4 of that document contains the following provisions:

> Section 4 Transfer of Employees
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> 1. Notwithstanding any provisions in the Collective Agreement or Income Security Program to the contrary, the provisions of this Section 4 shall apply to Consolidations of RTC Centers.
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> 2. When RTC Centers are consolidated, RTCs holding permanent positions and spare RTCs at the location being transferred will have first right to fill positions transferred to the Center.
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> 3. Employees holding permanent positions at the RTC Centre being transferred that elect not to transfer to the Consolidated RTC Center with their work shall be entitled to receive the following severance benefits:
>
>   a) Employees who have completed 8 or more years (96 months) of cumulative compensated service and commenced service prior to January 1, 1994, may, upon submission of formal resignation from the Company's service:
>
>   i) Claim a severance payment of $65,000.

ii) An employee electing benefits under this provision will not be entitled to any other benefits provided elsewhere in the Income Security Program, this Appendix or the Collective Agreement.

iii) In no event shall the amount of severance benefit provided under this provision exceed the straight earnings that an employee would have earned on the position permanently held at the time the employee elects this benefit had such employee continued to work until age 65.

b) Employees who have not completed 8 or more years (96 months) of cumulative compensated service or who commenced service subsequent to January 1, 1994, may, upon submission of formal resignation from the Company's service:

i) Claim severance payment equal to 2.5 weeks pay for each year of cumulative compensated service.

ii) An employee electing benefits under this provision will not be entitled to any other benefits provided elsewhere in the Income Security Program, this Appendix or the Collective Agreement.

iii) In no event shall the amount of severance benefit provided under this provision exceed the straight earnings that an employee would have earned on the position permanently held at the time the employee elects this benefit had such employee continued to work until age 65.

4. In the event that more RTCs at the RTC Centre being transferred elect to fill the positions created (transferred) to the Consolidated RTC Centre, the benefits contained in Article 4.1, Options 1, 2 or 3 of the Income Security Program shall be first offered in seniority order, to employees who have completed 8 or more years (96 months) of cumulative compensated service and commenced service prior to January 1, 1994 at the location of the RTC Center being transferred. The number of Article 4.1, Options 1, 2, or 3 benefits available shall be equal to the number of excess RTCs wishing to transfer to the Consolidated RTC Center.

   Note: Manager RTCs released from supervisory positions who choose to return to the bargaining unit as a result of a Consolidation of RTC Centers will be included in determining whether an excess number of RTCs at the RTC Center being transferred elect to fill positions created (transferred) to the Consolidated RTC Center.

5. Should an insufficient number of employees at the location of the RTC Centre being transferred choose to elect to receive the available benefits contained in Article 4.1, Options 1, 2, or 3, the unused benefit packages shall then be offered in seniority order to employees who have completed 8 or more years (96 months) of cumulative compensated service and commenced service prior to January 1, 1994 at the location of the Consolidated RTC Centre.

As a first proposition, it would appear that the Company is correct in its view that Appendix A-2 has priority application in the case of the consolidation here under consideration. That is plainly reflected in the terms of sub paragraph 1 reproduced above. The question then becomes, at what point does the Income Security Agreement, and the benefits of Article 5.3 B to sub entitlement come into play.

The language of sub-paragraph 4 of Section 4 of Appendix A-2 does not square entirely with the position of the Company to the effect that the Appendix offers employees only the alternatives of transfer or severance. It appears from the language of sub-paragraph 4 that the appendix also contemplates benefits under the ISA being available to employees who are not able to transfer by virtue of all positions in the consolidated RTC Center being filled. It appears that at that point the exercise of options and potential benefits under the ISA may be triggered for those employees.

In the Arbitrator's view it is important to read the language of Appendix A-2 and the language of the ISA clearly and separately, and to appreciate the relationship between the two documents. The position argued before me by the Union effectively submits that the ISA applies, *simpliciter*, strictly by virtue of the notice provided by the Company. On that basis its counsel argues that sub-entitlement as provided in Article 5 of the ISA comes to bear for the employees affected, triggering their entitlement to layoff benefits. With respect, I have some difficulty with that position. The language of Appendix A-2 reproduced above, is clear that it takes precedence over any provisions in the Income Security Agreement. By a reading of that document, the benefits of the

Income Security Program depend on the conditions of insufficient job opportunities at the consolidated RTC Center described in paragraph 4 of Section 4 of Appendix A-2.

It is less than clear to the Arbitrator that the parties intended employees to have a broad and unfettered access to the protections of the ISA, including access to layoff benefits, or sub-entitlement, when they are faced with the consolidation of RTC Centers, a circumstance specifically addressed under the terms of Appendix A-2. While it is true that Appendix A-2 and the ISA may be complementary, they are not interchangeable. As is clear from the language of Section 4 of Appendix A-2 in the case of consolidations the provisions of Appendix A-2 take precedence over different or contrary provisions of either the collective agreement or the Income Security Agreement.

In the result, I am satisfied that the grievance, as presented, cannot succeed. I am compelled to the conclusion that the position of the Company is correct, to the effect that under the operation of Appendix A-2 transfer or severance are the two primary options, with access to the ISA only in the event of the triggering of paragraph 4 of Section 4 of Appendix A-2. In the circumstances, I am satisfied that it is correct to conclude that access to the provisions of the ISA is dependent on satisfying the conditions described in paragraph 4 of Section 4 of Appendix A-2. I must agree with the Company that this is not a situation of layoff of the kind intended to be addressed by the provisions of the ISA, save as that point might be reached through the operation of sub-paragraph 4 of Section 4 of Appendix A-2, a condition which has not been proved as satisfied before me.

In these circumstances it is unnecessary for the Arbitrator to deal with the separate issue respecting the language of Article 5.3 (b) of the ISA, and the issue of rectification. However, if it were necessary, to decide that question, I would have some difficulty rejecting the position of the employer that as the language of Article 5.3 (b) has remained unchanged through some six consecutive renegotiations of the collective agreement, over a period of some twenty years. I would therefore not be inclined to go behind the language as it appears or to apply a principle rectification, as requested by the Union.

November 18, 2013

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MICHEL G. PICHER

ARBITRATOR