CANADIAN RAlLWAY OFFlCE OF ARBITRATlON

SUPPLEMENTARY
TO
CASE NO.575

Heard at Montreal, Tuesday, November 9th, l976

Concerning

CANADlAN NATlONAL RAlLWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGlNEERS

There appeared on behalf of the Company - Tuesday, July 12th, 1977

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| G. A. Carra | System Labour Relations Officer, C.N.R., Montreal |

And on behalf of the Brotherhood:

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| J. B. Adair | General Chairman, B.L.E., St. Thomas, Ont. |
| E. J. Davies | Vice-President, B.L.E., Montreal |

SUPPLEMENTARY AWARD OF THE ARBITRATOR

By the award in this matter, the grievor was to be reinstated in employment without loss of seniority or other benefits, and with compensation for loss of earnings. The parties have been unable to agree on the amount of compensation thus payable to the grievor.

Generally speaking, where compensation for loss of earnings is awarded, what is meant thereby is that the employee is to be placed, as nearly as possible, in the position he would have been in had he not been unjustly discharged. The basic calculation is that of the amount he would have been paid in respect of his employment, and to deduct from that the amount he did in fact receive from employment, or should have received, had he made proper efforts to mitigate his losses.

In the instant case, the collective agreement makes specific provision for the compensation payable where the discipline imposed on an employee is cancelled. Article 88.9 of the collective agreement provides as follows:

> 88.9 An appeal may be made in accordance with the Grievance Procedure. Should discipline after appeal be found to be unjust, resulting in cancellation of such discipline, a locomotive engineer losing time shall be paid for time lost 100 miles for each consecutive 24 hours at minimum through freight rate, less any amount earned in other employment.

In my view this provision applies not only to the case in which discipline may be determined in the course of the grievance procedure to be unjust, but also to the case, such as the instant case, where it is found to be unjust by the arbitrator. Article 88.9 is a general provision relating to compensation of employees who have been unjustly disciplined. The company was correct, therefore, in calculating the compensation payable to the grievor by having regard to article 88.9.

The union raised as well the matter of the grievor's entitlement to payment during the period when he would be on vacation. He would, of course, have been entitled, quite apart from the award in this matter, to vacation pay based on 1975 earnings. He will, as well, be entitled in 1977 to vacation pay based on 1976 earnings, which would, I assume (the question not being now before me), include payments made pursuant to the award in this matter. He would not be making additional earnings during the period when he would be on vacation, so that the company was justified in not considering that period as "time lost" for the purposes of applying article 88.9.

Compensation is, therefore, payable in accordance with the foregoing, which appears to be substantially what the company has done.

J.F.W. WEATHERILL
ARBITRATOR