

CANADIAN RAILWAY OFFICE OF ARBITRATION

SUPPLEMENTARY

TO

CASE NO. 713

Heard at Montreal, Tuesday, July 10th, 1979

and

Tuesday, September 11th, 1979

Concerning

ONTARIO NORTHLAND RAILWAY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

There appeared on behalf of the Company: Tuesday, September 11, 1979

A. Rotondo - Manager, Labour Relations, O.N.R., North Bay,
Ont.

And on behalf of the Brotherhood:

T. N. Stol - Representative, C.B.R.T., Don Mills, Ont.
R. A. Anderson - Local Chairman, CBRT, LO.40, Englehart, Ont.

SUPPLEMENTARY AWARD OF THE ARBITRATOR

At the joint request of the parties, a hearing in this matter was held on September 11, 1979, to deal with certain questions relating to the implementation of the award in this matter.

In the award, it was held that there had been a contracting-out of certain work, but that the relief sought by the Union (apart from the recall and compensation of two employees) went too far. The award was, therefore, simply "that Messrs. Feroli and McConnell be recalled to work (subject to seniority) and compensated for wages and benefits lost."

Two questions have arisen with respect to the award. The first is as to the compensation payable to the two employees. The second is as to the assignment of the work contracted-out.

As to the first question, the employer seeks to deduct from the compensation otherwise payable to the employees the amounts of any earnings made by them during the period in question, and any amounts relating to days when they were not available for duty. These deductions are proper. The employees were awarded compensation for loss of earnings, and to the extent to which they did have earnings

(and they were, as many cases have held, under a duty to mitigate their losses by seeking other employment), or to the extent they would not have been at work in any event, they cannot be said to have suffered a loss of earnings and their right to compensation is accordingly limited.

Further, it appears that as a result of subsequent events, the employees concerned have again been subject to layoff. That matter, however, arises after the events which gave rise to the grievance and is not properly before me in the context of this case.

As to the assignment of the work contracted-out, the recall of the grievors (being two of three employees affected by the contracting-out, the third was not laid off), to the former jobs would have the effect of restoring the status quo, that is, the reversal (to the extent at least that it affected employees in this bargaining unit) of the pooling arrangements with respect to city traffic in the Kirkland Lake area. That is to say, I consider that the Union's understanding of the award in this respect is correct: "...the Award is simply saying the work in the Kirkland Lake P. & D. area previously (prior to February 1st, 1979) performed by O.N.R. Express employees is to be returned to them." The award did not, however, say more than that.

While I think that understanding of the award is correct, it did not necessarily follow that the work, if assigned to the employees concerned on their recall, would continue to be assigned to them. Subsequent events might alter the situation. Indeed, it would appear that subsequent events have altered the situation, the arrangement for pooled deliveries having been terminated by Star Transfer Limited, after the issue of the award in this case. Its work in this respect is now performed, it would appear, by Star's own employees. There has, then, been a separation of the city operations, but in a manner unfavourable to the employees in this bargaining unit. The work is no longer performed by O.N.R., either directly or by way of contracting-out. This development is subsequent to the events which led to the grievance, and I make no final judgment with respect to it except to say that it is a separate set of events from that dealt with in the Award.

The withdrawal of the Star Transfer work, together with what is said to be a seasonal decline in the Moosonee Express Transfer traffic left the Company with an excess of employees and has led, it is said, to the two employees in question being laid off again. This is not a question relating to the implementation of the Award, but simply involves the propriety of the employees' layoff in the circumstances which existed at that later time. It is not a question over which I have any jurisdiction in the matter now before me.

The foregoing, in my view, deals with the questions raised at the further hearing of this matter.

J. F. W. WEATHERILL
ARBITRATOR