CANADIAN RAILWAY OFFICE OF ARBITRATION

SUPPLEMENTARY AWARD

TO

CASE NO. 900

Heard at Montreal, Wednesday, January 11, 1984

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Pacific Region)
and

UNITED TRANSPORTATION UNION

(Decided on the basis of the parties' written submissions)

There appeared on behalf of the Company:

F. R. Shreenan	- Asst. Supervisor, Labour Relations, CPR, Vancouver
B. P. Scott	- Labour Relations Officer, CPR, Montreal

And on behalf of the Union:

P. P. Burke	- Vice-President, UTU, Calgary
J. H. McLeod	- General Chairman, UTU, Calgary

AWARD OF THE ARBITRATOR

Pursuant to an Arbitrator's Award, the grievor, Conductor D. A. Berarducci, was reinstated in employment "without loss of seniority or other benefits, and with compensation for loss of earnings from and after January 13, 1981". The period comprising the grievor's suspension was between January 13, 1981 and January 19, 1982, during which time the grievor was obliged to mitigate his losses. During this period the grievor secured employment on two separate occasions. While at each position he was given the opportunity to perform overtime work. The parties are agreed that the amount of overtime pay received by the grievor during the period of his suspension was in the amount of $13,761.39. The issue in this case is whether the company was justified in deducting that amount as mitigated earnings from the amount the company was obliged to pay the grievor as compensation pursuant to the Arbitrator's Award.

The arbitral case law is clear that an aggrieved employee must take reasonable steps to mitigate his losses during the period he has been deprived of employment at the instance of his employer. In the grievor's situation there is no dispute that he has met that requirement. Nonetheless, it is immaterial to the amount the employer may deduct as mitigated earnings whether the grievor as a result of the "reasonable effort" exerted earns extra monies because

of the overtime he has worked. As was stated in Re Dover Corporation (Canada) Ltd. Turnbull Elevator Division and International Association of Machinists, Elevator Lodge 1257 (1980) 12 LAC (2d) 8 (Brunner)

> "The measure of damages in the case of unjust dismissal is the amount that the employee would have earned had the employment continued according to the collective agreement, subject to the deduction in respect or any amount accruing from any other employment which he, in minimizing his damages, either had obtained or should reasonably have obtained."

In these circumstances the monies attributable to the overtime worked are monies that the grievor "should reasonably have obtained notwithstanding the extra effort that may have been exerted. That amount represents a legitimate consideration on the employer's part in determining the grievor's real loss arising out of its decision to discharge. As a result the grievor's claim that he be reimbursed the monies earned at the overtime rate for work performed is denied.

In reaching this conclusion I have not overlooked the arbitral cases referred to me in the trade union's brief. It is unnecessary to make any conclusive comment with respect to them because those cases deal with situations where a grievor receives earnings from working simultaneously at two jobs. Whether monies obtained from both those positions ought to be treated "as an amount accruing from any other employment which he, in minimizing his damages, either had obtained or should reasonably have obtained", is not the grievor's situation in this particular case. I am satisfied, however, that the arbitral cases referred to me in the company's brief, to the extent both overtime and incentive earnings are discussed, apply squarely to the grievor's circumstance.

The grievor's claim is therefore denied.

DAVID H. KATES,
ARBITRATOR.