

CANADIAN RAILWAY OFFICE OF ARBITRATION

SUPPLEMENTARY AWARD

TO

CASE NO. 1234

Heard at Montreal, Wednesday, November 14, 1984

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)  
(Prairie Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

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

There appeared on behalf of the Company:

D. A. Lypka - Asst. Supervisor, Labour Relations, CPR,  
Winnipeg  
R. A. Colquhoun - Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen - System Federation General Chairman, BMWE,  
Ottawa  
R. Y. Gaudreau - Vice-President, BMWE, Ottawa  
L. M. DiMassimo - Federation General Chairman, BMWE, Montreal  
G. Valance - General Chairman, BMWE, Sherbrooke

AWARD OF THE ARBITRATOR

In my original award in April, 1984, I made the following direction:

"....Accordingly, I am of the view that the permanent demotion imposed should be a demotion of 14 months duration. At the expiry of his demotion Mr. Zarichanski is to be returned to his regular foreman's position."

At the time of the issuance of the award Mr. Zarichanski was out of service on Workman's Compensation recovering from the injury incurred during the course of the incident that prompted the employer's original decision to discipline. Because of his injury Mr. Zarichanski did not report for work until November 14, 1983. The company insists that the fourteen month demotion should commence as of that date. The trade union, on the other hand, insists the demotion should commence on the date the permanent demotion was originally imposed on April 19, 1983.

The issue I must resolve is whether or not the period of the demotion

of 14 months duration should encompass the time Mr. Zarichans was on compensation (approximately seven months).

As explained to the parties during the hearing my rationale for imposing a demotion of 14 months duration was to ensure that the company would not be required to pay the grievor any compensation had I restricted the period of the demotion to 12 months. Quite candidly, in my own mind, I calculated the demotion to commence on April 19, 1983 when the company imposed the permanent demotion. It is equally clear that in reaching that conclusion I did not take into account the grievor's absence from work because of his disability. In short, I substituted a demotion of definite duration for the permanent demotion imposed by the company.

Because no qualification was attached to my direction expressly allowing for the exclusion of Mr. Zarichanski's absence from work while on injury leave, I am obliged to accede to the trade union's interpretation of the scope of my direction. That is to say, the 14 month period of the demotion commenced on April 19, 1983. As a result, the grievor should have been reinstated to his regular foreman's position on June 19, 1984. The company is directed to reinstate the grievor to that position and to compensate him accordingly.

DAVID H. KATES,  
ARBITRATOR.