

CANADIAN RAILWAY OFFICE OF ARBITRATION

SUPPLEMENTARY AWARD

TO

CASE NO. 1475

Heard at Montreal, Tuesday, April 8, 1986

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

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

There appeared on behalf of the Company:

D. W. Coughlin	- Manager Labour Relations, CNR, Montreal
J. B. Bart	- Labour Relations Officer, CNR, Montreal
M. C. Darby	- Coordinator Transportation, CNR, Montreal
W. J. Dear	- Superintendent, CNR, Kamloops

And on behalf of the Union:

R. A. Bennett	- General Chairman, UTU, Toronto
G. Dumas	- Local Chairman, UTU, Montreal

AWARD OF THE ARBITRATOR

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The parties have sought clarification of the direction contained in my initial decision where I stated:

"Accordingly, the disciplinary penalties assessed against the grievor's are to be removed from their personal records and the company is directed to comply with Item 4(d) in the event it elects to proceed again to discipline the grievors."

The legal and technical result of my direction was to vitiate the disciplinary penalties hitherto taken against the grievors and accordingly to effect their removal from their personal records. To all intents and purposes because of the tainted procedures adopted by the company in discharging its obligation to conduct a fair and impartial investigation the previous actions taken by the company were nullified in their entirety.

Moreover, because "the procedural irregularity" which the company was found to have committed was without prejudice to its taking appropriate disciplinary action the company, if it sought to take further action, is still obliged to adhere to the requirements of a

fair and impartial investigation as if no previous actions had been taken.

It may very well be that such recourse, from a practical perspective may prove costly and ultimately a superfluous exercise. Nonetheless, the technical status of the grievors situations remains as if nothing in the past had occurred. And, that being the case, in the absence of trade union consent, the company must begin anew its adherence to the prescribed procedures for a fair and impartial investigation.

DAVID H. KATES,  
ARBITRATOR.