

CANADIAN RAILWAY OFFICE OF ARBITRATION

SUPPLEMENTARY AWARD TO

CASE NO. 1720

Heard at Montreal, Thursday 10 March 1988

Concerning

CANADIAN NATIONAL RAILWAY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

There appeared on behalf of the Company:

L.A. Harms	- Labour Relations Officer, Montreal
J.R. Hnatiuk	- Manager Labour Relations, Montreal

And on behalf of the Brotherhood:

P. Seagris	- General Chairman, Winnipeg
G. Hall	- General Chairman, Quebec

SUPPLEMENTARY AWARD OF THE ARBITRATOR

In the original award the Arbitrator allowed the grievance, reinstated the grievor with compensation for all wages and benefits lost, retaining jurisdiction in the event of any dispute between the parties. A dispute has arisen with respect to the computation of compensation.

The Company asserts that the grievor is to be compensated pursuant to the terms of Article 86.6 of the Collective Agreement which provides as follows:

86.8 An appeal against discipline assessed may be made in accordance with the Grievance Procedure. Should discipline be cancelled, a locomotive engineer who has lost time shall be paid 100 miles for each consecutive 24 hours at minimum through freight rates for time lost, less any amount earned in other employment.

(Refer letter 20 July 1967 - Held Off for Investigation - Addendum No. 4.)

The Brotherhood maintains that the foregoing provision applies only with respect to wages lost by an employee by virtue of the time he or

she may be held out of service to participate in an investigation. It submits that the cancellation of discipline described within the Article refers only to a decision by the Company following the investigation, and not to a reversal of the outcome at a later date by the award of a board of arbitration. In the Brotherhood's view this Office is unconstrained by any provision of the Collective Agreement in awarding compensation.

The Company argues that Article 86.8 was intended to apply as an agreed formula for the compensation of an employee whose discipline is reversed by an award of this Office. In this regard it points to C.R.O.A. Case No. 575, and in particular the Supplementary Award of the Arbitrator with respect to the amount of compensation payable in that case. That decision, which issued under Collective Agreement 1.1, and not the instant agreement, applied Article 88.10 of that agreement which provided:

88.10 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.

The Company submits that the intention of Article 88.10 in Agreement 1.1 which governs the Eastern Lines is the same as Article 86.8 in Agreement 1.2, the Collective Agreement for the Prairie and Mountain Regions.

The Arbitrator is satisfied that the position of the Company must be sustained. In my view that conclusion is apparent from the language of Article 86.8 itself. It is not disputed that, as a general matter, employees who are the subject of discipline have a right to be present, and almost invariably are present, during the investigation hearings for which they are held out of service. It is noteworthy, however, that the language of Article 86.8 is framed in terms that provide compensation to the employee "... less any amount earned in other employment." In the Arbitrator's view the foregoing provision reflects the contemplation of the parties that an employee may hold other employment during the period of time for which compensation is to be assessed. An employee could not, generally, earn wages in other employment while he or she is in attendance at a disciplinary investigation. That conclusion leads me to the more compelling inference that Article 86.8 was not intended to be limited in its application, as the Brotherhood contends, to compensation for days held out of service during investigation. On the contrary, I am satisfied that it is intended to provide an agreed formula for the computation of compensation for an employee in the circumstances of Engineer Primeau, whose discipline was reversed and who was ordered to be compensated for wages lost as a result of an award of this Office. Engineer Primeau is therefore to be compensated on the basis of the formula advanced by the Company.

The matter is remitted to the parties with the foregoing direction, and I continue to retain jurisdiction.

(SGD) MICHEL G. PICHER
ARBITRATOR