CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1928

Heard at Montreal, Thursday, 14 June 1989

Concerning

CANADIAN PACIFIC LIMITED

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

BROTHERHOOD:

Removal from service of Mr. R. Henderson on or about September 1, 1987, due to a medical condition.

COMPANY:

Removal from service of Mr. R. Henderson on or about September 1, 1987, due to use of insulin and medical condition.

STATEMENT OF ISSUE:

BROTHERHOOD:

On or about September 1, 1987, Mr. Henderson was advised that he was removed from service, effective immediately on account that a medical condition of diabetes does not permit him to be employed in the Maintenance of Way Department.

The Union contends that:

1. - The employer's general policy not to employ diabetics on the Maintenance of Way Department is unreasonable, unjust and discriminatory;

2. - The employer unjustly removed Mr. Henderson from service without consideration of supportive medical evidence; and

3. - The employer removed and continues to withhold Mr. Henderson from service unjustly.

The Trade Union requests that, Mr. Henderson be returned to work forthwith with full seniority and compensated for all lost wages and expenses as a result of this discrimination.

COMPANY:

On or about September 1, 1987, Mr. Henderson was advised that he was

held out of service effective immediately. He was so advised on account of his need to inject insulin one or more times each day, and since his medical condition itself arising from the diabetes might disqualify him from being employed as a trackman on the railway

The Company contends that:

1. - It is the policy of the Company to employ diabetics as trackmen unless they are required to inject insulin daily (Type I Diabetics) or unless their physical condition is such that they cannot safely perform the work of a trackman;

2. - It is the policy of the Company not to employ insulin dependant diabetics (Type I Diabetics) as trackmen due to the danger of hypoglycemic reactions Mr. Henderson is an insulin dependent diabetic. This is a bona fide occupational requirement, and;

3. - The employer removed and withheld Mr. Henderson from service with cause.

The Company requests that this grievance be denied.

| FOR THE BROTHERHOOD: | FOR THE COMPANY: |
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| (SGD) M. L. McINNES | (SGD) J. M. WHITE |
| SYSTEM FEDERATION | GENERAL MANAGER OPERATION & |
| GENERAL CHAIRMAN | MAINTENANCE, WEST, HHS |

There appeared on behalf of the Company:

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| M. Shannon | - Counsel, Montreal |
| I.J. Waddell | - Manager, Labour Relations, Manager |
| L.J. Guenther | - Assistant Supervisor, Labour Relations, Vancouver |
| L.G. Winslow | - Labour Relations Officer, Montreal |
| M.E. Keiran | - Assistant Supervisor, Labour Relations, Vancouver |
| J. Inshaw | - Witness |
| R. Peters | - Witness |
| Dr. G. Joron | - Witness |

And on behalf of the Brotherhood:

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| D. J. Corry | - Counsel Calgary |
| M. Gottheil | - Counsel, Ottawa |
| M. L. McInnes | - System Federation General Chairman, Vancouver |
| L. DiMassimo | - General Chairman, Montreal |
| G. Kennedy | - General Chairman, Vancouver |
| K. Deptuck | - General Chairman, Winnipeg |
| S. A. Ross, M.D. | - Witness |
| H. Arouin | - Observer |
| R. Henderson | - Grievor |

AWARD OF THE ARBITRATOR

The grievor, Mr. Robert Henderson, has been employed as a trackman

working on the maintenance of main lines and spurs, chiefly in areas immediately north and west of Calgary, Alberta. He was diagnosed as being diabetic in August of 1985 and by October of 1986 became insulin dependent, or what is commonly referred to as a "Type I" diabetic. In February of 1987 the Company requested a medical report on the grievor's condition. It appears that there was some delay in response. However, having received a letter from the grievor's personal physician in July of 1987 confirming his status as an insulin dependent diabetic, Mr. Henderson was advised by a memorandum dated September 1, 1987 that he was removed from service immediately as a trackman because of his medical condition. Positions in alternative employment were then suggested to Mr. Henderson, none of which he found acceptable. As a result, therefore, he became effectively terminated from the Company's service in September of 1987.

The parties adduced relatively extensive evidence before the Arbitrator with respect to the condition of diabetes mellitus generally, and the medical history of Mr. Henderson in particular. The position of the Company, which relies principally on the evidence of Dr. Guy E. Joron, an acknowledged expert in endocrinology, toxicology and diabetes, is that because of the unpredictability of the risk of a hypoglycemic reaction among insulin-dependent diabetics generally it is unsafe to employ a Type I diabetic in a safety-sensitive position, such as that of a trackman. Dr. Joron explains that hypoglycemia occurs when blood sugar levels are too low. He describes a mild hypoglycemic reaction as being evidenced by such symptoms as perspiration, weakness, a blurring of the vision or the onset of hunger. Such a reaction is generally correctable by the immediate ingestion of sugar. A serious hypoglycemic reaction, which is generally defined as one which requires the diabetic to have the assistance of another person, can involve symptoms of confusion, aggressiveness, somnolence and, in extreme cases seizures, the onset of a coma and even death.

The concern of the Company is perhaps best expressed by the reliance of Dr. Joron on one particular academic study conducted in the United Kingdom. The study suggests that nine percent of insulin-dependent diabetics have severe hypoglycemic reactions in the course of a year; of that group in over one third of cases no specific cause for the severe hypoglycemic reaction could be identified. (Potter, Clarke, Gale, Dave, Tattersall, Insulin-induced Hypoglycemia in an Accident and Emergency Department: The Tip of an Iceberg?, the British Medical Journal, Vol. 285, October 23, 1982.) Several other studies are referred to in the Company's brief and were touched on in the evidence of Dr. Joron as confirming the findings of the United Kingdom study. At the risk of oversimplification, the position put forward by Dr. Joron is that with current technology and levels of knowledge there remains a significant factor of unpredictability in the occurrence of severe hypoglycemic reactions in insulin-dependent diabetics. In his view, and in the view of the Company, that risk is sufficiently substantial as to justify a general policy excluding Type I diabetics from all safety-sensitive positions, including that of trackman. The Company submits that for these reasons it had just cause to terminate the grievor's employment as a trackman.

The essence of the Union's position is that the Company has erred in

treating Mr. Henderson as a member of a class, rather than determining the issue of his employability based on the merits of his individual circumstances and medical condition. It is common ground that the grievor is a "stable" diabetic. He has never experienced a serious hypoglycemic reaction. It does not appear disputed that on only one occasion since his adjustment to insulin-dependency has he suffered a mild hypoglycemic reaction. According to Mr. Henderson's account this occurred while he was doing weight-lifting exercises in his home. He states that he experienced a feeling of slight shakiness which he was able to bring under control immediately by consuming sweets. The evidence establishes beyond any dispute that Mr. Henderson has achieved a high level of control of his diabetic condition. In part through an awareness of his diabetes gained through the orientation program for diabetics conducted by the Diabetes Clinic at Foothills Hospital in Calgary, was well as his own conscientiousness with respect to his diet and living habits, Mr. Henderson has achieved an exemplary degree of control over his condition as an insulin-dependent diabetic. It is not disputed that he has demonstrated sensitivity to balancing the three factors that can influence his blood sugar levels: insulin, food intake and exercise.

The evidence establishes that a further technological development has assisted Mr. Henderson in coping with his medical condition. It is the blood glucose monitor, or glucometer, which is a portable, battery-powered, digital device which allows a person to take his or her blood sugar reading at any time. Mr. Henderson explains that he has used a glucometer since 1986, normally some four times a day, as a means of verifying his ongoing blood sugar levels. His readings are recorded in a log which, accumulated over time, provides a long-range view of the stability of his blood sugar levels. This is, in some measure, a means of verifying his day-to-day control of his own blood sugar levels and continuing status as a stable diabetic. The evidence of Dr. Stuart A. Ross, an acknowledged expert in the field of diabetes treatment, who is the Director of the Diabetes Education Centre at Foothills Hospital, who has been the specialist principally responsible for the grievor's treatment, further discloses that memory glucometers are now available which automatically record blood sugar level readings, thereby eliminating the possibility of human error or deliberate manipulation in the entries made manually in a diabetic's log of his or her blood sugar levels. In others words, it is now possible for the blood sugar levels of a person in the position of Mr. Henderson to be monitored and recorded automatically, on an ongoing basis, with the results being regularly examined by a competent medical authority.

The position of the Union rests largely on the evidence of Dr. Ross. He states that the studies of risk relied upon by the Company are flawed in that they do not draw their conclusions from a control group of stable diabetics such as Mr. Henderson. Dr. Ross does not dispute that if insulin-dependent diabetics are taken as a whole, there will be an unavoidable incidence of unpredictable hypoglycemic reactions found. This he attributes in substantial part to the make-up of various individuals who comprise the test sample for any such general study. Diabetics are not equal in their faithfulness to diet, insulin intake and sensitivity to tolerable levels of exercise. According to Dr. Ross, therefore, surveys of the kind relied upon by

the Company will inevitably produce results suggesting a certain degree of unpredictable hypoglycemic reactions. In his view that is an almost inevitable result of the inherent biases of the studies in question. Citing, for example, the United Kingdom study discussed above, Dr. Ross suggests that the basis for the survey used in that case, which is patients with severe hypoglycemic reactions reporting to emergency rooms in hospitals, may very well start with a sample group of Type I diabetics who are less controlled or stable, and therefore prone to such reactions. He also doubts whether the studies take sufficient care to identify and eliminate reactions which, although similar, are not in fact caused by hypoglycemia.

Dr. Ross's position is that the employability of insulin-dependent diabetics cannot be assessed on a generalized basis. He states that it must be judged on an individual basis, having regard to the history of the diabetic in question, to the diabetic's knowledge of the condition and to his or her ability to control the factors of insulin intake, diet and exercise to maintain safe blood sugar levels at all times. It is the testimony of Dr. Ross that Mr. Henderson is manifestly a stable diabetic who has achieved a high degree of control of his condition, in consequence of which he does not pose an unacceptable risk in terms of his employment. Dr. Ross, who has been directly involved with Mr. Henderson as a patient since 1985, states that Mr. Henderson has achieved an exemplary degree of understanding of his insulin-dependence and control of his blood sugar levels on a day-to-day and hour-to-hour basis. Based on the record of Mr. Henderson's performance in this regard, Dr. Ross expresses the professional opinion that Mr. Henderson, who is licensed to drive a motor vehicle in Alberta, poses no greater medical risk of sudden incapacity because of hypoglycemia than he does to being incapacitated by a stroke or a heart attack. Putting it differently, in response to a question by the Arbitrator, Dr. Ross stated that assuming he maintains his present level of sensitivity and control of his blood sugar levels, Mr. Henderson is at no greater risk of impairment by his condition that is another employee performing the same work to the possibility of a stroke or heart attack.

Counsel for the Company relies substantially upon the decision of the Federal Court of Canada in Canadian Pacific Limited v Canada Human Rights Commission, Peter Cummings and Wayne Mahon. In that decision, issued on June 16, 1987, the Federal Court of Appeal overturned the decision rendered by a Human Rights Tribunal appointed under Section 39 of the Canadian Human Rights Act which concluded that the Company could not invoke freedom from insulin dependence as a bona fide occupational requirement for the position of trackman. In that case the majority of the Court found that the adjudicator erred in concluding that the employee's insulin dependence constituted a real risk to safety, but that because of the slight magnitude of the greater risk, the Company was not justified in establishing freedom from insulin dependence as a bona fide occupational requirement. The thrust of the Court's decision in Mahon appears to be that where it is established that a real risk, however slight, is established, freedom from that risk may be justified as a bona fide occupational requirement for the purposes of Section 14 of the Canadian Human Rights Act.

The issue before the Arbitrator is whether Mr. Henderson was

discharged for just cause. Put differently, it is whether the Company can justify his removal from the position of trackman because of his status as an insulin-dependent diabetic.

It is not disputed that the Company has, by its policy, knowingly discriminated against Mr. Henderson because he is a diabetic. From a procedural standpoint it appears well established that the Company bears the burden of proof to demonstrate, on the balance of probabilities, that the condition of the individual employee is such that he or she lacks a bona fide occupational requirement which justifies his or her removal from employment, once the employee has established a bona fide case of discrimination. In this regard the principles governing a board of arbitration can be no different than those which govern the Human Rights Tribunals and the Courts (see Ontario Human Rights Commission v Burrough of Etobicoke (1982) 132 D.L.R. (3d) (S.C.C.) at p.19 and CROA 1585).

While the overall burden of proof rests upon the Company to justify an employee's discharge, as a practical matter it may be incumbent upon the employee to bring forward satisfactory evidence to rebut such evidence as the Company may adduce to demonstrate that the employee belongs to a group which is at an unacceptable level of risk. That is so simply because it is the employee, and his or her physician, who are in possession of the specific medical information necessary to a final determination. Where, however, such medical information and expert opinion is brought fully to the attention of the employer and it disproves, on the balance of probabilities, that the employment of the individual constitutes any significant risk to safety, the continued discharge of that individual cannot be said to be for just cause within the terms of a collective agreement. (See Re Firestone Tire and Rubber Company of Canada Ltd. and United Rubber Workers, Local 113 (1973), 3 L.A.C. (2d) 12 (Weatherill).)

In the Arbitrator's view, the instant case differs in some important respects from the case before the Courts in Mahon. In that case both the Tribunal and the Court accepted that the employee's condition, according to the evidence adduced before the Human Rights Tribunal, created a greater risk from the standpoint of safety than if the individual had been free of insulin dependence. While the Tribunal attempted to quantify that risk in mathematical terms, and stressed that the risk was not high, the Court remained of the view that the existence of the risk was sufficient to justify the Company's invoking freedom from insulin dependence as a bona fide occupational requirement. It does not appear from the decision of the Court that consideration was given to the value of the use of glucometers or the alternative technology of haemoglobin testing as a means of tracking blood sugar levels and establishing the stability of insulin-dependent individuals. According to the evidence of Dr. Ross, it would seem that these technologies were not as fully developed and available at the time of the Mahon case, and that patient awareness programs were also not as advanced as they now are.

In light of the extensive evidence and materials filed, including significant recent advances in medical technology and the evolution of legal protections fostered chiefly by human rights legislation, there are compelling reasons to doubt that each and every insulin-dependent diabetic must be conclusively presumed to be

unemployable in a safety sensitive position. The expert testimony given in the instant case establishes beyond serious dispute that stable diabetics with a high degree of discipline and sensitivity to their condition can function normally and remain free from serious hypoglycemic reactions, virtually over a lifetime. Where, as in the instant case, competent and credible expert medical opinion based on substantial documentation establishes that a specific employee is a stable diabetic in control of his or her condition, and is at no greater risk of incapacity by a serious hypoglycemic reaction than a non-diabetic employee is at risk of stroke or heart attack, it is difficult to conclude that the discriminatory exclusion of that individual from employment has been proved to be justified on the basis of a bona fide occupational requirement. While the person's status as an insulin-dependent diabetic may well justify a number of conditions and precautions in relation to continued employment, the blanket exclusion of that person from a safety-sensitive position cannot be said to be justified by the mere fact that the employee is an insulin-dependent diabetic. The question must always be whether the individual poses a real risk to safety - a determination which can be made only by reference to that person's medical history and personal circumstances, viewed in the light of expert medical opinion. (See Kingsway Transports Ltd. and Teamsters Union, Local 879 (1978), 1 L.A.C. 180 (Ellis) at p.193 Aff'd. by the Ont. Div. Ct. (1979) 23 L.A.C. (2d) 144.)

The human rights jurisprudence amply supports the employability of stable insulin-dependent diabetics in safety-sensitive positions. In Nowell v Canadian National Railway Ltd. (1987) C.H.R.R. D/3727 the Canadian Human Rights Tribunal found that the employer railway in that case discriminated against an insulin-dependent diabetic when it removed him from his position of trainman. Noting that the complainant in that case was a well-controlled diabetic with no significant diabetic reactions over a period of fifteen years, it was concluded that in his case freedom from insulin dependence was not a bona fide occupational requirement for the safety-sensitive position of trainman. At page D/3731 the Tribunal made the following observations:

> Considering the evidence (particularly the medical evidence) and the nature of the employment concerned, the so-called occupational requirement is not reasonably necessary to assure the efficient and economical performance of the job without endangering the employee, his fellow employees and the general public (in the words of McIntyre, J. in the Etobicoke case). The evidence adduced does not justify the conclusion that there is sufficient risk of employee failure in this particular case to warrant his exclusion from the position of Trainman in the interests of his safety, the safety of his fellow employees or the safety of the general public. The sufficiency of risk was not proved in this case. There was no evidence that the likelihood of Mr. Nowell's suffering an incapacitating reaction was because of his Diabetes. In fact, the evidence was to the contrary. In 15 years as a diabetic, he never suffered an incapacitating reaction. He is a well controlled diabetic who was physically fit to do the job of Trainman ...
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> In this case, the occupational requirement is specifically

> directed to a group of individuals with the same condition, diabetes mellitus, who are insulin-dependent. It does not establish a working condition as in Bhinder. Therefore, to determine the bona fides of the occupational requirement in this case, one must look to determine whether the individual should be excluded because he belongs to the group. The group includes such a wide variety of individuals with varying degrees of capability and varying degrees of their disease, that it is impossible and would be most unjust to determine the bona fides of the occupational requirement without regard to individual assessment ...
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> It is imperative, both in the interest of determining the bona fides of the occupational requirement in this case and in the interest of justice, to determine whether an individual such as Mr. Nowell can perform the function of Trainman from which he is excluded (by virtue of a discriminatory practice) without risk to himself, his fellow employees or to the general public. In doing so, it is clear from the evidence that Mr. Nowell does not pose a sufficient risk of employee failure to justify his exclusion from the position of Trainman.
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> (emphasis added)

It appears that in the wake of the Nowell decision CN has altered its policies with respect to the employability of insulin-dependent diabetics. In the May 1989 edition of CN Rail Newsletter "Keeping Track", under an article entitled "A Health Problem Need Not Necessarily Be a Disability: No More Brick Walls" that Company has effectively announced a different approach to the employability of insulin-dependent diabetics, with the emphasis being on the individual rather than on the disability. That article states, in part:

> CN's policies toward people with disabilities have changed significantly during the past seven years. With a new emphasis on human rights, medical rulings now focus on the individual rather than the disability.
>
> In the past, individuals with, say diabetes or heart disease were simply rejected if they applied for positions such as locomotive engineer, dispatcher, or machinery operator, because their medical conditions are associated with sudden incapacity. While legitimate concerns over safety are at issue, for some people this brick wall may be unfair. With good treatment, as well as proper care through diet, exercise, or other means, they may be no more at risk of sudden incapacity than the average person.

The Union further adduced documentary evidence confirming that CN has judged that an insulin-dependent diabetic is employable as a track maintainer. It cites the case of Mr. Andrew Quintel, a track maintenance foreman from Conklin, Alberta. Because of his insulin dependence Mr. Quintel was removed from his position as a section foreman, which included responsibility for driving a track motorcar. The railway permitted him to exercise his seniority as a track

maintainer, a position roughly equivalent to that of trackman held by Mr. Henderson. Upon a further request by the Union that Mr. Quintel's restriction be reconsidered, CN apparently agreed to allow him to work as a foreman on branch lines, provided that he is at all times accompanied by another employee.

In the United States it has been found that a railway wrongfully removed an insulin-dependent diabetic from his job as a railroad fireman by virtue of a blanket prohibition against Type I diabetics (see Hines v Grand Trunk Western Railroad Company (1986), 391 N.W. (2d) 75 (Mich. App. 1985). (See also McKenzie v Quintette Coal Ltd. (1986), 87 C.H.R.R. D/3672, where it was found that a miner was wrongfully deprived of employment by virtue of his status as an insulin-dependent diabetic.)

What principles do the foregoing authorities establish which are instructive to the resolution of this grievance? Foremost among them is that the individual is to be judged on his or her own merits with regards to employability. Where the evidence discloses that an employee is at no greater risk than the average, his or her medical condition cannot be asserted as proof of the failure to satisfy a bona fide occupational requirement. Given the sophistication of contemporary blood sugar monitoring systems, as well as the heightened awareness on the part of both patients and physicians with respect to the factors that influence serious hypoglycemic reactions, it must be acknowledged that where a stable diabetic can establish, on the basis of expert medical opinion, that he or she is at no real risk of incapacity, discharge of that individual from a safety-sensitive position cannot be found to be for just cause.

In the instant case it is clear that Mr. Henderson has been denied employment as a trackman simply because he is an insulin-dependent diabetic, and without specific regard to his own medical history and condition. With the greatest respect, in light of the authorities reviewed above, the approach taken by the Company disregards the essential issue. The issue is not whether insulin-dependent diabetics are, as a general matter and viewed from an actuarial standpoint, a higher risk group for the purposes of their employment in safety-sensitive positions. The issue is whether Mr. Robert Henderson, notwithstanding his insulin dependence, poses such a risk to the Company's operations as to justify his termination from employment as a trackman.

With respect to that issue the Arbitrator finds the evidence of the Union to be compelling. The Company's doctors have not examined Mr. Henderson and have no knowledge of his specific condition beyond what they have learned through Dr. Ross. Dr. Ross, an admitted expert in the diagnosis and treatment of diabetes mellitus, has testified without substantial contradiction with respect to the specific circumstances of Mr. Henderson. His evidence confirms that the grievor is a stable diabetic who has never experienced a serious hypoglycemic reaction and who has demonstrated an exemplary lifestyle and sensitivity to the factors of insulin intake, diet and exercise that ensure the maintenance of safe blood sugar levels. The evidence of Dr. Ross, which the Arbitrator accepts, is that from a medical standpoint, based on all of the available evidence, Mr. Henderson is at no greater risk of incapacity by reason of his insulin dependence

than other employees are to incapacity by some unforeseen medical cause such as stroke or heart attack. That opinion is given in the full knowledge of the rigours of the day-to-day work, including emergency assignments, performed by a trackman. Dr. Ross's conclusion appears amply supported by Mr. Henderson's own medical history and is, moreover, not inconsistent with the circumstances of other stable insulin-dependent diabetics, as noted in the authorities and examples cited above. Needless to say if the evidence disclosed that the grievor did not have an established record of stability, had difficulty following a safe and controlled regime, or had a record of recurring hypoglycemic reactions, the evidence might support a very contrary conclusion (see cf CROA 1585).

Just cause for Mr. Henderson's termination is not established on the evidence before the Arbitrator. In the circumstances of the instant case, however, I am not persuaded that the grievor should be reinstated without certain conditions designed to protect the legitimate interests of the Employer. It is not disputed that much of the Union's case establishing the employability of Mr. Henderson rests on the largely subjective premise of his faithfulness to a healthy lifestyle and careful control of his insulin intake, diet and exercise. These are factors which are necessarily beyond the Employer's ability to control. As disclosed in the evidence of Dr. Ross, however, the stability of Mr. Henderson's blood sugar level is not beyond the near-foolproof monitoring on an ongoing basis. In the Arbitrator's view, given the grievor's condition as a stable insulin-dependent diabetic, it would not appear unreasonable to require as a condition of his reinstatement that he undertake a program of ongoing periodic monitoring of his blood sugar levels, with the further requirement that he be subject to periodic medical examinations, the results of which are to be disclosed to the Company's doctor. Such a precaution will ensure that in the unlikely event that Mr. Henderson's condition as a stable and controlled diabetic should change, that development will become readily known to his own physician as well as to the Company.

For the foregoing reasons the Arbitrator finds that the Company has not established that it had just cause for the termination of Mr. Henderson as a trackman. There are reasons, however, to limit the amount of compensation owing to Mr. Henderson. It appears that the Company was not in receipt of any expert medical opinion concerning Mr. Henderson from a specialist in the treatment of diabetes until it received full medical information and documentation from Dr. Ross in a letter dated December 1, 1988. In the Arbitrator's view from that date forward the Company knew, or reasonably should have known, that the grievor was at no greater risk than other employees with respect to his employment as a trackman. Mr. Henderson shall therefore be reinstated into his employment forthwith, with compensation for all wages and benefits lost, calculated from December 2, 1988 to the date of his reinstatement, subject to the conditions stated hereafter. The compensation payable to the grievor shall, however, be calculated by taking into account all mitigating factors, including the potential mitigation available to him through the offer of alternative employment made to Mr. Henderson by the Company at the time he was removed from his duties as a trackman. The grievor's reinstatement is further conditional upon his agreeing to monitor his own blood sugar levels by means of a memory glucometer, not less than

four times daily, and to faithfully log the resulting readings. Both the log kept by the grievor and the recordings of the glucometer are to be submitted both to Dr. Ross, or to another physician mutually acceptable to the parties, as well as to the Company's doctor, through Dr. Ross or such other physician. Such reports shall be made on a frequency to be agreed upon between the parties, failing which it shall be determined by the Arbitrator. Mr. Henderson's reinstatement is further conditioned upon his agreeing to submit to regular medical check-ups with Dr. Ross, or an alternate physician mutually agreeable to the parties, at intervals not to exceed six months, the results of which shall be forwarded to the Company's doctor. Moreover, given the emphasis which the Union has placed on the "buddy system" of work among track maintenance crews as a built-in safety factor, the grievor's reinstatement is further predicated upon his acceptance of the additional condition that he not be assigned to work alone in an isolated location, if the Company should choose to impose such a requirement.

The Arbitrator retains jurisdiction in the event of any dispute between the parties respecting the interpretation or implementation of this Award.

July 12, 1989 (Sgd.) MICHEL G. PICHER
ARBITRATOR