

CANADIAN RAILWAY OFFICE OF ARBITRATION

SUPPLEMENTARY AWARD TO

CASE NO. 1937

Heard at Montreal, Tuesday, 9 April 1991

concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

BROTHERHOOD'S STATEMENT OF ISSUE:

The Brotherhood and CP Rail are unable to resolve our differences on the following matters:

1. Compensation to Engineer Spring for all wages lost during the period March 26, 1988 to July 28, 1989;
2. Restoration of all benefits to Engineer Spring, including holidays, Canada Pension Plan and Company pension lost during the period March 28, 1988 to July 28, 1989;
3. Removal of 20 demerit points for the period March 28, 1988 to March 28, 1989; and
4. Removal of 20 demerit points for the period March 28, 1989 to March 28, 1990.

FOR THE BROTHERHOOD:

(SGD.) T. G. HUCKER
GENERAL CHAIRMAN

There appeared on behalf of the Company:

M. Kieran	Assistant Unit Manger, Labour Relations, Vancouver
B. Scott	Labour Relations Officer, Montreal
K. E. Webb	Labour Relations Officer, Vancouver
G. Chehowy	Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

T. G. Hucker	General Chairman, Calgary
B. Marcolini	President, UTU-Canada, Ottawa

A. Royer

Observer

SUPPLEMENTARY AWARD OF THE ARBITRATOR

The Arbitrator is satisfied that he is without jurisdiction to entertain any of the claims submitted by the Brotherhood in this matter. Firstly, the request for compensation for wages lost, as well as the request for payment of benefits, is in direct contradiction to the position originally taken by the grievor and the Brotherhood before me in this grievance. As acknowledged by the Brotherhood's representative at the hearing, the grievor did not seek compensation or benefits as part of his submission to arbitration in this matter. When the grievance came on for hearing by the agreement of the parties, following a waiver of the Company's original objection to the untimeliness of the grievance, the Brotherhood put forward no claim for compensation or benefits on behalf of Mr. Spring. In the Arbitrator's view the request now made by the Brotherhood to entertain the grievor's present request for compensation would amount to an improper expansion of the grievance beyond its original scope, and beyond the jurisdiction of the dispute submitted to the Arbitrator. For these reasons I must conclude that the matter so raised is not arbitrable within the confines of this grievance.

The second issue before me is whether the grievor is entitled to the removal of twenty demerit points for each of two successive years from March 28, 1988 to March 28, 1990. While the argument is not fully before me, it appears that the Brotherhood maintains that because the grievor should not have been removed from service initially, he should be credited for discipline-free service for the period claimed. While the Arbitrator has some initial difficulty with the merits of that suggestion, it must also be concluded that it is not arbitrable within the instant grievance. The record reflects that by letter dated July 26, 1989 the Company and the Brotherhood agreed to restore the grievor's discipline record to reflect a standing of forty-five demerits. That arose as part of the settlement of a subsequent grievance filed by Mr. Spring. In the circumstances, even if it could be argued that the matter of Mr. Spring's discipline standing was intrinsically related to the completion of my award in this file, a matter on which I make no observation, any jurisdiction which I may have had in that regard would have been extinguished subsequently by the express agreement of the parties establishing the grievor's disciplinary record as of July 26, 1989. On that further basis I must find that the matter in dispute is not arbitrable as part of the instant grievance.

For all of the foregoing reasons the request of the Brotherhood for the relief claimed must be denied.

April 12, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR