

CANADIAN RAILWAY OFFICE OF ARBITRATION

SUPPLEMENATRY AWARD TO

CASE NO. 2100

concerning

CANADIAN PACIFIC EXPRESS & TRANSPORT

and

TRANSPORTATION COMMUNICATIONS UNION

Based on the written submissions of the parties.

SUPPLEMENTARY AWARD OF THE ARBITRATOR

This award issues at the request of the parties in light of a misunderstanding which has arisen with respect to the grievor's entitlement to a weekly indemnity claim. By the award herein dated February 15, 1991 the Arbitrator effectively decided that a suspension should be substituted for the grievor's discharge. That is the consequence of the decision that she should be reinstated into her employment, without compensation or benefits for the period of her absence. In the result, the purported discharge of the grievor is null and void ab initio, and there has been no effective severance of her employment at any time. She is, therefore, not ``re-employed'' when she returns to work (or to the payroll list in the event that she is absent because of continued illness) as a result of the Arbitrator's reinstatement order. In the result, therefore, Ms. Belan must be considered to have continued uninterrupted in active service as an employee until such time as her medical condition would, in the normal course, have caused her to be absent from work, but for the fact that she had been discharged.

For the foregoing reasons the Arbitrator is satisfied that the grievor need not return to active duties as a condition to receiving the disability benefits which she would, but for her wrongful discharge, have received. I therefore find and declare that the position taken by the Union in its letter to the Arbitrator dated June 27, 1991 is correct, and that coverage was in effect for the grievor effective February 15, 1991. Needless to say, the foregoing finding is without prejudice to the rights of the Company or the Insurer to require the grievor to produce the kind of medical documentation which would be necessary to support the claim of any employee on active service.

I continue to retain jurisdiction in the event of any further misunderstanding.

July 13, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR