

CANADIAN RAILWAY OFFICE OF ARBITRATION
SUPPLEMENTARY AWARD TO
CASE NO. 2215

Heard at Montreal, Wednesday, 13 May 1992
concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

There appeared on behalf of the Corporation:

A. Cartier

Assistant General Council, Montreal

M. St-Jules

Senior Negotiator & Advisor, Labour Relations, Montreal

C. Pollock

Senior Officer, Labour Relations, Montreal

D. S. Fisher

Senior Officer, Labour Relations, Montreal

J. Kish

Senior Negotiator, Labour Relations, Customer Services, Montreal

C. Rouleau

Senior Officer, Labour Relations, Montreal

And on behalf of the Brotherhood:

J. L. Shields

Counsel, Ottawa

T. N. Stol

National Vice-President, Ottawa

G. T. Murray

Regional Vice-President, Moncton

T. A. Barrons

Representative, Moncton

A. Wepruk

Representative, Montreal

M. Marretto

Representative, Montreal

SUPPLEMENTARY AWARD OF THE ARBITRATOR

The parties have requested the Arbitrator to clarify the issue of compensation owing to the grievor pursuant to the award herein dated February 14, 1992. For the reasons expressed in the award, the Arbitrator is satisfied that the delay in presenting the documentary evidence referred to in the award is a factor which should be applied in mitigation of the compensation to which the grievor is entitled. She should not, therefore, be compensated for the period between February 15, 1991, and February 14, 1992. The Arbitrator directs that she be compensated for all of the balance of the time between the date when the Corporation terminated her employment security, and the date at which her employment security status was reinstated, pursuant to the award of February 14, 1992. As it appears that the parties have not exchanged precise figures with respect to the quantum of compensation, I retain jurisdiction in the event of their inability to agree in that regard.

For the purposes of clarity, it should be stressed that nothing in the award of February 14, 1992 should be taken as suggesting that the Brotherhood owes any obligation of compensation to the grievor in the circumstances disclosed. On the contrary, the Brotherhood's representatives dealt at all times earnestly and in good faith in the representation of their members' rights before this Office, in the handling of a large number of grievances which were national in scope and were of unprecedented complexity and importance, given the massive reduction in operations effected by the Corporation on January 15, 1990, pursuant to a decision of the Government of Canada to substantially reduce passenger train service. The marshalling of the documents and other evidentiary material in the pleading of CROA 2074, as well as a number of other grievances heard at the same time, involved a substantial effort to compress a large mass of information for the purposes of presentation in a relatively informal and expedited hearing process. While, from a technical standpoint, the presentation and elaboration of the two documents referred to in the award of February 14, 1992 is a factor to be considered in respect of the quantum of compensation, it is not a matter upon which this Office would make any finding adverse to the Brotherhood, assuming that it had such jurisdiction. At most what has transpired is a failure of communication, made in good faith, in the transmission of positions and documents, of the kind which is not uncommon in the course of the grievance and arbitration process. While such a matter is appropriately taken into account in quantifying compensation, that is the limit of its significance. The matter is referred back to the parties, and the Arbitrator continues to retain jurisdiction.

May 15, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR