

CANADIAN RAILWAY OFFICE OF ARBITRATION

SUPPLEMENTARY AWARD TO

CASE NO. 2289

Heard at Montreal, Tuesday, 11 May 1993

concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

EX PARTE

DISPUTE:

The following are the issues the parties are unable to agree on:

1. Were the employees covered by CROA 2289 entitled to travel allowance?
2. What terminals are the employees entitled to claim following their return to ES status pursuant to CROA 2289? (The Corporation says Halifax, the Brotherhood maintains Moncton.)
3. What is the total period of compensation owed? The Corporation takes the position that there is no compensation for the one-year period as outlined in CROA 2215.
4. What is the total amount of compensation to which each employee is entitled?
5. As a result of the unnecessary delay in implementing the award, the Brotherhood is claiming interest damages from the date of the award.
6. Is Mr. Paul Martel covered by the award?

FOR THE BROTHERHOOD:

(SGD.) T. N. STOL

NATIONAL VICE-PRESIDENT

There appeared on behalf of the Corporation:

D. S. Fisher	- Senior Negotiator & Advisor, Labour Relations, Montreal
J. R. Kish	- Senior Advisor, Labour Relations, Montreal
C. Rouleau	- Senior Officer, Labour Relations, Montreal
C. Thomas	- Senior Officer, Human Resources, Montreal

And on behalf of the Brotherhood:

T. Barrons	- Representative, Moncton
G. Gallant	- Representative, Moncton

SUPPLEMENTARY AWARD OF THE ARBITRATOR

The Arbitrator finds and determines as follows:

1. The Corporation is correct in its view that eight of the grievors fall into the same category as the grievor in CROA 2215. Each of the eight employees refused a call to fill a bulletined position off region. In that respect they cannot fairly be distinguished from the grievor in CROA 2215. For the purposes of clarity, it should be noted that the parties are agreed that two of the grievors affected by this award were not offered bulletined positions, and are therefore entitled to compensation without reduction based on CROA 2215. In the Arbitrator's view the Corporation was entitled, until the issuing of that award, to rely on CROA 2074 in its treatment of the employment security status of the eight grievors in question whose circumstances are indistinguishable from those of the grievor in CROA 2215.

2. The Arbitrator does not, in the circumstances, of this case, order any interest from the date of the award. To do so would, in my view, change the terms of the award and go beyond merely completing it. While such a remedy may be available before a court charged with enforcing an arbitration award, it is not within the jurisdiction of a board of arbitration to change the terms of its award or add to them in a substantive manner.

3. The Arbitrator finds that the employees are entitled to be paid at the protected rate of pay in effect at the time for which they are entitled to compensation, subject to the reduction of their compensation in accordance with CROA 2215. They are entitled to eighty hours' pay per pay period as well as to payment for statutory holidays during the period in question, and to unpaid medical allowance.

4. The Arbitrator is satisfied that the employees are not entitled to the Uniform & Grooming allowance during the period claimed, save for periods when they actually worked.

5. The grievors are to have their vacation credits reestablished for that period of their claim which is not reduced by reason of the application of CROA 2215.

6. The grievors shall have their benefits reestablished, subject to the limitation of their rights in accordance with CROA 2215.

7. The grievors shall have their layoff benefits reestablished to their bank, subject to their layoff benefits being applied in mitigation of their overall compensation.
8. The Corporation shall compensate the grievors for any increased rate in Canada Pension contributions which may apply to their compensation by reason of the escalation of rates between 1990 and 1993, subject to the application of CROA 2215.
9. All gross layoff benefits received by the grievors during the claim period shall be deducted from their compensation.
10. The Corporation shall deduct from the compensation payable to the grievors unemployment insurance benefits which they have received, which shall be remitted to Receiver General of Canada, in a manner consistent with the Unemployment Insurance Act.
11. The Corporation shall deduct from the compensation package payable to the grievors all normal deductions, such as income tax, unemployment insurance premiums, Canada Pension Plan contributions, Company pension plan contributions and the like.
12. The Corporation may apply, in reduction of the compensation payable to the employees, amounts equivalent to earnings which they would have made but for the fact that they refused calls to work on the spareboard. In this regard the refusal of one employee shall not reduce the obligation to mitigate on the part of another employee. With respect to occasions when the employees were not available to receive a call, the earnings which they might have made will be deducted in mitigation only where the employee cannot establish, on the balance of probabilities, that he or she was working elsewhere at the time or was unavailable because he or she was actively looking for employment. The foregoing directive is subject to the parties examining the specific data with respect to the calls made to the employees, and to eliminating any undue duplication in the reduction of the compensation owing to them. For the purposes of clarity, the parties should appreciate that, as a matter of general principle, the Arbitrator treats the duty to mitigate in respect of the claim for employment security status to be no different than would apply to an employee who was discharged. Subject to the terms of CROA 2215, as it applies to eight of the grievors, the employees in question should be placed, insofar as possible, in the same position as regards their earnings as would have obtained had they not been removed from employment security status.

The Arbitrator continues to retain jurisdiction in the event of any further dispute.

May 14, 1993
MICHEL G. PICHER
ARBITRATOR
