

CANADIAN RAILWAY OFFICE OF ARBITRATION
SUPPLEMENTARY AWARD TO
CASE NO. 2357

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS
SUPPLEMENTARY AWARD OF THE ARBITRATOR

By letter dated 28 April 1993, the Brotherhood's representative seeks a clarification of one aspect of the award herein dated April 16, 1993. The letter questions the following comment by the Arbitrator with respect to article 4.2 of the collective agreement:

... De plus, il n'y a rien dans cet article qui exige que la convocation à l'enquête soit émise dans une forme particulière, ou qu'une copie conforme d'un avis soit fournie à la fraternité, même si c'est la pratique générale. ...

... In addition, nothing in that article requires that the notice to appear at an investigation should be done in a set way, or that a carbon copy of the notice should be provided to the Brotherhood, even if this is the general practice. ...

[Brotherhood's translation]

The Company has made no submission in respect of the Brotherhood's letter. It appears from the letter that the Brotherhood's representative has difficulty squaring that observation with the following language appearing in article 24.2 of the collective agreement:

24.2 Investigations in connection with alleged irregularities will be held as quickly as possible. Employees may be held out of service for investigation (not exceeding three working days). They will be given at least twenty-four (24) hours' notice of the investigation and notified of the charges against them. (A copy of the notice for an investigation will be given to the Local Chairperson.) ...

[emphasis added]

The answer to the Brotherhood's question lies in the finding that the conditions described in article 24.2 of the collective agreement are directory, and not mandatory. The use of the word "will" rather than the word "shall" as applied both to the period of notice and to the providing of a copy confirms that the terms of the article are directory. Further support for the conclusion that they are not intended to be mandatory is to be drawn from the fact that no specific consequence for non-compliance with the conditions is to be found in the terms of the collective agreement.

The question raised by the Brotherhood does not appear to result from any disagreement between itself and the Company as to the interpretation or implementation of the award. It would appear to be more in the nature of a request for reconsideration, which is arguably beyond the Arbitrator's jurisdiction. Nevertheless, absent any objection by the Company, this supplementary award is issued in hopes that the parties will gain assistance for future reference.

June 11, 1993(SGD.) MICHEL G. PICHER
ARBITRATOR