CANADIAN RAILWAY OFFICE OF ARBITRATION

SUPPLEMENTARY AWARD TO

CASE NO. 2415

concerning
CANADIAN NATIONAL RAILWAY COMPANY

and
CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[BROTHERHOOD OF LOCOMOTIVE ENGINEERS]

SUPPLEMENTARY AWARD OF THE ARBITRATOR

Following the issuing of the award herein, dated November 12, 1993, the Arbitrator received written submissions from counsel for the United Transportation Union, who is now also counsel for Mr. P. Malloy, by letter dated November 26, 1993, and submissions in reply from counsel for the Company, by letter dated December 7, 1993. In light of the submissions made by both counsel, the Arbitrator deems it appropriate to issue a supplementary award in this matter clarifying the award as it pertains to UTU member R. Walton as well as Mr. P. Malloy.

As reflected in the award, both Mr. Walton and Mr. Malloy were also disciplined. During the course of the Rousseau arbitration, in light of the submissions made by the parties, it became necessary for the Arbitrator to deal with the issue of whether the discharge of Mr. Rousseau was discriminatory, having regard to the discipline assessed against other individuals. It must be emphasized that any comments made in respect of Mr. Walton and Mr. Malloy were made on the face of the record, and solely for that purpose.

While Mr. Walton was present as a witness, under subpoena from the Company, he was excluded from the hearing and not called to testify. His bargaining agent at the time of the discipline issued against him, the United Transportation Union, was not present and did not participate in the proceedings. Significantly, the Arbitrator was not advised that Mr. Walton has grieved the discipline assessed against him, and that his grievance is still pending. Nothing in the award of November 12, 1993 should be taken as a comment of the merits of any grievance which Mr. Walton is entitled to progress to arbitration. Specifically, while Mr. Walton's investigatory statement the Company was filed in evidence, there was no evidence nor were there any submissions made to the Arbitrator with respect to additional facts, nor in respect of any mitigating factors such as Mr. Walton's personal circumstances, or the length and quality of his prior service. Mr. Walton and the Company are entitled to a full and fair hearing of his grievance upon its merits, and any comments made in respect of the fact that Mr. Rousseau was deserving of more serious discipline were made purely for comparative purposes, and are entirely without prejudice to the rights of either Mr. Walton or the Company in the eventual hearing of the merits of Mr. Walton's grievance.

The same considerations apply to the circumstances of Mr. Malloy. Mr. Malloy was under subpoena by the Company and remained outside the hearing room. Unbeknownst to the Arbitrator, Mr. Malloy requested arbitration in respect of his discharge under the terms of section 61.5 of the Canada Labour Code. While he was present as an available witness at the hearing, he was not represented by counsel and no representations were made with respect to the specific merits of the discipline assessed against him. As with Mr. Walton, any reference to the discipline assessed against Mr. Malloy was made for the purpose of dealing with the submissions of the parties in respect of the fairness of the penalty assessed against Mr. Rousseau. Anything said for the limited purposes of Mr. Rousseau's case is entirely without prejudice to the merits of any grievance which may be progressed to arbitration by Mr. Malloy. While Mr. Malloy's statement was filed in evidence before the Arbitrator, there were no representations made with respect to any additional facts which might be pertinent to his case, nor any mitigating factors such as the length or quality of his service, the degree of his cooperation in the Company's investigations or any other matters which might have a mitigating impact. The observations made in respect of Mr. Malloy were intended solely for the purpose of dealing with the arguments of comparison raised by the parties. The award of November 12, 1993 is plainly without prejudice to the right of Mr. Malloy, or of the Company, to adduce the fullest evidence, and make the fullest representations with respect to the merits of his case before the appropriate forum, should his grievance remain unresolved and proceed to arbitration.

In keeping with the established policy of the Office, the Arbitrator retains jurisdiction in the event of any further dispute or misunderstanding between the parties concerning this matter.

11 February 1994 (sgd.) MICHEL G. PICHER
ARBITRATOR