CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2519

Heard in Montreal, Tuesday, 13 September 1994

concerning

Canadian National Railway Company

and

Canadian auto workers (Canadian Brotherhood of Railway, Transport & General Workers)

EX PARTE

DISPUTE:

Retroactive compensation for time worked not restricted to wages.

Ex Parte STATEMENT OF ISSUE:

In the Memorandum of Settlement dated April 9, 1992, Section 14(d), and the Memorandum of Agreement dated June 30, 1992, Section 10, it is indicated that "Employees who were in the service of the Company on April 9, 1992, shall be entitled to any amount of compensation that may be due them for time worked subsequent to December 31, 1991."

It is the Union's contention that the compensation referred to in the Memorandum of Agreement does not specifically refer to wages, but includes any monetary matters which relate to time worked, such as the upgrading of certain positions, trainers' allowances, etc.

The Company denies any violation of the Memorandum of Settlement or the Memorandum of Agreement..

FOR THE BROTHERHOOD:

(SGD.) T. N. Stol

National Vice-President, CBRT&GW

There appeared on behalf of the Company:

L. F. Caron – Manager, System Labour Relations, Montreal

O. Lavoie – System Labour Relations Officer, Montreal

M. M. Boyle – Director, Labour Relations, Montreal

And on behalf of the Union:

T. N. Stol – National Co-Ordinator, CAW, Ottawa

R. Fitzgerald – Local Chairman, CAW

B. Formoe – Local Chairman, CAW

AWARD OF THE ARBITRATOR

There are four heads of dispute within the instant grievance. The first concerns the Union's allegation that article 16.7 of the Memorandum of Settlement, which provides for a $2.00 per hour trainer's allowance for employees designated to train others should apply retroactively to all training work done since January 1, 1992. Second, the Union maintains that certain wage reclassifications in respect of Carload Waybill Clerk, B Force Timekeeper and Extra Gang Timekeeper positions be paid retroactive to the same date. Third, it seeks the application of a $0.47 per hour increase to Foremen Mechanics, Heavy Duty Mechanics and Mechanics to be retroactive to January 1, 1992 and, fourthly, that separation payments under article 3.2(a)(iii) of the Employment Security and Income Maintenance Plan be retroactive both with respect to the wage rates which would apply, and to the number of weeks' salary credited for each year of service remaining prior to normal retirement. The Union bases its position, primarily, on the language of section 14(d) of the

Memorandum of Settlement. It asserts that all matters relating to the compensation of employees was intended, by that provision, to be retroactive to January 1, 1992, save as otherwise indicated within the language of the agreement.

The Company submits that there was no discussion of any of the issues of retroactivity now being asserted by the Union during the course of bargaining. Its representative argues that the language of section 14(d) of the Memorandum of Settlement is intended to reflect a term of general application, with respect to the retroactivity of wages, in keeping with the normal pattern in collective agreements negotiated with the Union in the past, as well as with other unions of non-operating employees. It argues that the purpose of the clause is to identify employees, being those in service on April 9, 1992, who were entitled to retroactive wages in accordance with the agreement. It is intended, the Company argues, to clarify that the employees who left the employment of the Company prior to April 9, 1992 cannot claim any retroactivity. Further, the Company points to the use of the words "that may be due to them" as an indication that further reference must be had to the terms of specific parts of the agreement for further clarification as to the retroactivity of certain compensation clauses.

Upon a review of the language and scheme of the collective agreement the Arbitrator is compelled to agree with the position advanced by the Company. It is clear that the Memorandum of Settlement, as well as the Memorandum of Agreement, make substantial reference to the retroactivity of certain provisions, by reference to specifically articulated effective dates. For example, article 2 provides for a shift differential to be payable effective January 1, 1993, and the dental plan, found in article 3, refers to certain improvements effective January 1, 1992 and January 1, 1993. Other examples, such as provisions for life insurance, sickness benefits, maternity leave benefits and the extended health care plan indicate that the parties adverted quite specifically to the effective date upon which particular terms of their collective agreement touching wages and benefits would be deemed to come into effect. In this circumstance it would appear to the Arbitrator reasonable to conclude that the general intention of the parties is that issues respecting the retroactive wages and benefits are specifically addressed. There is ample evidence that they intended that the schedule of any new payments in respect of wages or benefits is to begin only on the basis of clear and unequivocal language within the terms of their collective agreement.

A purposive examination of the interpretation advanced by the Union supports the same conclusion. For example, if the Union is correct with respect to its interpretation of the increase of $.047 per hour for mechanics, there would arguably be a substantial windfall to the employees affected. It is not disputed that to gain the $0.47 per hour increase the Union gave up hourly allowances previously paid to the mechanics. If retroactivity were applied as suggested by the Union, the mechanics would, at least for the period prior to July 1, 1992, have the benefit of both the prior allowances and the increased hourly rate.

The language of the ESIMP also supports the position of the Company. Article 15.2 of the ESIMP provides specifically that the

effective date for the commencement of amended benefits for the Union is July 1, 1992. On that basis the Arbitrator must sustain the position of the Company that the new formula for calculating benefits under the ESIMP is effective only as of that date, although, as the Company concedes, employees who were in the service of the Company on April 9, 1992 are entitled to the application of that formula based on wages retroactive to January 1, 1992.

The Arbitrator is likewise satisfied that the new trainer allowance of $2.00 was not intended to be retroactive, and that, in keeping with normal practice, the upgrading of positions such as carload waybill clerk was intended to be separate from the issue of general wage retroactivity.

On the whole, the Arbitrator can find no language within the terms of the parties' agreement to sustain the position of the Union with respect to retroactivity of the items in dispute. For these reasons the grievance must be dismissed.

16 September 1994(sgd.) MICHEL G. PICHER
ARBITRATOR