

CANADIAN RAILWAY OFFICE OF ARBITRATION

Supplementary award to

CASE NO. 2640

Heard in Montreal, Wednesday, 10 April 1996

concerning

Canadian National Railway Company

and

Brotherhood of Maintenance of Way Employees

There appeared on behalf of the Company:

N. Dionne – Manager, Labour Relations, Montreal
M. S. Hughes – Labour Relations Officer, Montreal
J. Butterwick – Assistant District Engineer, Vancouver

And on behalf of the Brotherhood:

D. W. Brown – Sr. Counsel, Ottawa
R. F. Liberty – System Federation General Chairman, Winnipeg
K. M. Deptuk – Vice-President, Ottawa
P. Davidson – Counsel, Ottawa

Supplementary AWARD OF THE ARBITRATOR

This matter has come on for re-hearing, by reason of the parties' inability to agree upon the interpretation and implementation of the award herein dated June 16, 1995. That award concluded, in part, as follows:

For the foregoing reasons the grievance is allowed, in part. The Arbitrator finds and declares that the Company is entitled to require "D" Book qualification in the CROR for trackmen hired since the introduction of its training program effective January 1, 1978. However, any employee who was not released from service under the terms of section 7.14 of the supplemental agreement must, in keeping with the spirit of that article, be provided not less than a two year period from the date of this award to attain such qualification in light of the policy adopted pursuant to the Engineering Forces Reorganization, in July of 1994. Moreover, any such requirement must be subject to the provisions of the **Canadian Human Rights Act**, where applicable. Secondly, the Arbitrator finds and declares that the Company cannot require persons holding the rank of trackman whose date of hire precedes January 1, 1978 to qualify for the "D" Book level of the CROR as a requirement of their continued employment as a trackman.

It must be emphasized that the jurisdiction which this Office exercises in the instant case is that of interest arbitration. During the course of bargaining the parties could not agree upon the treatment which should be given to employees

in the track maintainer position, as regards qualification in the "D" book. As is evident from the paragraph quoted above, the award confirms the ability of the Company, as a general matter, to require "D" book qualification in the CROR for trackmen hired since January 1, 1978. However, with the greatest of respect, the Company has misconceived the intent and consequences of the Arbitrator's award. In practice, it has denied track maintainers hired prior to January 1, 1978 the opportunity to bid on positions in two person crews where it maintains that its crewing adjustments require that the track maintainer be qualified in the "D" book. The intent of the award, with respect to track maintainers whose employment predates January 1, 1978 is that they be "grandparented" and therefore fully entitled to bid any track maintainer position, regardless of the fact that they may not hold CROR "D" book qualifications, as they were allowed to do prior to 1994. While that grandparenting provision may cause some difficulty to the Company with respect to its preference for crewing, any other arrangement must now be a matter for negotiation and agreement with the Brotherhood.

The second part of the award concerns the treatment to be accorded employees hired after January 1, 1978 who have not yet qualified in the "D" book of the CROR. In respect of this group of employees the interpretation which the Company has applied is consistent with the intent of the award. Employees within this category cannot assert, as of right, as is the case with the pre January 1, 1978 employees, access to any posted track maintainer position which would otherwise require qualification in the "D" book of the CROR. Such employees must, therefore, be limited to bidding track maintainer positions in respect of which the Company has not established that requirement. However, the employees hired after January 1, 1978, retain the equitable right to attempt to gain qualification in the "D" book over a period of two years from the date of the award. There is nothing in the text of the award, or the intention of the Arbitrator, however, to provide to those individuals a form of two year grandparenting comparable to the rights of employees hired prior to January 1, 1978.

In summary, and for the purposes of clarity, the Arbitrator declares that the interpretation of the Company with respect to the treatment of employees hired after January 1, 1978 is correct. With respect to persons hired prior to that date, however, the Company cannot exclude them from bidding upon any track maintainer position, regardless of location, by reason of the fact that they do not possess "D" book qualifications. This matter is remitted to the parties for further implementation.

April 12, 1996 **(signed) MICHEL G. PICHER**

ARBITRATOR