

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## SUPPLEMENTARY AWARD TO

# CASE NO. 2847

Heard in Montreal, Tuesday, 8 July 1997

concerning

# CANADIAN PACIFIC RAILWAY COMPANY

and

# TRANSPORTATION COMMUNICATIONS UNION

There appeared on behalf of the Company:

C. Graham – Labour Relations Officer, Calgary

And on behalf of the Union:

N. Lapointe – Assistant Division Vice-President, Montreal

## **SUPPLEMENTARY AWARD OF THE ARBITRATOR**

The decision herein dated April 12, 1997 directed that the grievor be compensated for the wages and benefits lost by reason of his termination of employment. The parties are unable to agree on two aspects of the calculation of the compensation owing to Mr. Sellier.

The first issue concerns the grievor's claim for an amount of \$50.00 relating to the cost of public transit utilized during his job search. The Arbitrator has some difficulty with this aspect of the claim. It is not disputed that the grievor, who resides in downtown Toronto, commuted to work for the Company in Agincourt. While precise evidence is not before the Arbitrator, it does not appear disagreed that the cost of commuting that distance compares generally to the cost which he incurred to commute in a more westerly direction, towards Mississauga and Peel, to find alternate employment. Bearing in mind that the purpose of compensation in an arbitration award is to generally make the employee whole, it appears to the Arbitrator if the grievor had not been dismissed he would have incurred costs of commuting which are roughly the same as those which he incurred for his job search. In that circumstance, the payment to him of his wages lost, without any adjustment for commuting costs, would place him in roughly the same position. For these reasons the Arbitrator cannot allow the claim for \$50.00 made in respect of commuting costs for Mr. Sellier.

The second part of the disagreement between the parties concerns the claim of the Union that the grievor should not have deducted, against the compensation payment made to him by the Company, amounts which correspond to overtime which he worked in an alternative position during the course of his termination. It is well settled, in the decisions of this Office, as well as in Canadian arbitral jurisprudence, that as a general rule all earnings, including overtime earnings, are to be deducted against the compensation payable by an employer in the event of the reinstatement of the employee, with compensation. (*See CROA 1867 and Re Dover Corporation (Canada) Ltd., Turnbull Elevator Division and International Association of Machinists, Elevator Lodge 1257 (1980), 12 L.A.C. (2d) 7 (Brunner).*)

It should be stressed that the above authorities make a general statement of principle. There may, to be sure, be cases in which it may be inequitable to give to an employer the benefit of extraordinary earnings or revenues obtained by an employee during the course of his or her effort at mitigating losses. That, it seems to the Arbitrator, is not the case in the instant matter. As the Company's representative notes, had the grievor not been discharged he

would have worked a total of some 1,016 hours during the period between his discharge and reinstatement. Over that time, however, he worked only a total of 578.25 hours in alternative employment. While it may be that some portion of that time was overtime, the facts do not, in my opinion, justify any adjustment in the overall compensation payable to Mr. Sellier. I am satisfied that the Company is correct in deducting all of the grievor's earned income, including overtime hours, in the calculation of the compensation which will in fact make him whole. The fact that the occasional overtime hours worked by the grievor during the course of his alternative employment might represent some adjustment in his lifestyle is, in my opinion, simply too remote for the purposes of a general calculation which, after all, seeks to restore the grievor from his overall loss of earnings.

For the foregoing reasons the Arbitrator sustains the position of the Company on both issues in dispute. The matter is referred back to the parties, and I continue to retain jurisdiction.

July 16, 1997

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**