

CANADIAN RAILWAY OFFICE OF ARBITRATION

SUPPLEMENTARY AWARD TO

CASE NO. 657

(Decided Wednesday, February 14, 1979)

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION (T)

(Decided on the basis of the parties' written submissions)

SUPPLEMENTARY AWARD OF THE ARBITRATOR

The award in this matter was "that the grievor be reinstated in employment forthwith, without loss of seniority or other benefits, save only that his compensation for any loss of earnings shall be for the period from January 1, 1977, until the date of reinstatement".

The grievor was reinstated pursuant to the award, and his seniority was unimpaired. He was paid for loss of earnings and benefits payable directly to him in respect of the period from January 1, 1977 until the date of his reinstatement. Loss of earnings was calculated on the basis of the earnings made by the employee who occupied the position which the grievor had held prior to his dismissal. That would appear to be a proper and reasonable basis for the calculation, and the Union accepted it. Certain payroll deductions were made from the gross amount so calculated. Those deductions would have been made had the grievor worked, and they are proper deductions from the amount payable in respect of loss of earnings, provided they are properly credited to the grievor's benefit (that is, paid to his credit in the Company pension plan, the Canada Pension Plan, his income tax account, and amounts due in respect of Unemployment Insurance premiums or repayments). There is no claim that such amounts were not properly credited.

The dispute which has arisen relates to the grievor's entitlement to benefits in addition to wages, and to the period for which such benefits are payable under the award. There can be no doubt from the award that the grievor was entitled to receive compensation for such benefits, at least for the period beginning January 1, 1977. These benefits include General Holidays, Annual Vacation, Miscellaneous Pay for Time Not Worked, Premium Pay, Medicare Allowance, Term Life Insurance, Paid-Up Life Insurance, Company Pension and Weekly Indemnity.

The grievor was paid for the thirteen General Holidays which fell between January 1, 1977 and the date of his reinstatement. This was correct. As to Annual Vacation, this benefit was calculated (properly) as though the grievor had worked throughout 1977. Although he had been paid, at the time of his dismissal, for certain vacation entitlements which would have arisen in the future, this amount was not set off, as it might have been, against the payment made on his reinstatement. The grievor appears, then, to have been overpaid in this respect. His full vacation entitlement was credited in 1978.

The grievor was compensated on the basis of full time attendance from January 1, 1977. The occasion would not arise for any entitlement to compensation for time not worked (jury duty, court attendance, bereavement leave) and the grievor suffered no compensable loss in that regard. As to premium pay, that is already included in gross earnings for the period, which figure, as noted above, was based on actual hours worked by the grievor's replacement. There would be an entitlement to overtime, and such payment was in fact made. A medicare allowance was payable. Based on the period of his "deemed" earnings, the grievor would have been entitled to \$201.02 on this account. That

amount was, apparently through inadvertence, not included in the amount of compensation payable to the grievor, although it should have been.

As to life insurance, both the term life and paid-up life policies to which the grievor was entitled have been restored. There has thus been no loss of benefit to him. The same is true with respect to his Company pension which has been restored, and he is to be considered as having been in service during the period from January 1, 1977. There has thus been no loss of benefit to him, from that time on. Finally, there has been no loss of Weekly Indemnity benefit, the grievor having received full benefit in respect of the period when, as may be concluded from the award, he ought to have been at work.

As far as compensation in respect of the period following January 1, 1977 is concerned, then, the grievor has been properly compensated, with two exceptions: 1) he has been overpaid in respect to Vacation; and 2) he has not been paid in respect of Medicare. The amount of the overpayment is greater than the amount of the underpayment. The grievor has, therefore, no valid claim for payment in respect of the period in question.

There remains the matter of the period of time for which payments are to be made. The effect of the award, reinstating the grievor, but without allowing full compensation (since, in the circumstances, the grievor was clearly subject to discipline) is to substitute a suspension for a discharge. There was, in effect, a suspension of six months. While such a suspension might not affect the employee's seniority (and it did not in this case, since the award expressly preserved the grievor's seniority) it must be expected to involve some considerable loss of earnings. Many benefits which may be expressed in monetary terms must be regarded as earned benefits and treated that way for the purposes of compensation and for other purposes. An employee on a long-term suspension such as this would not generally be considered as continuing to be entitled to such benefits during a period when he was not, due to his own misconduct, earning anything. Special considerations might apply to certain benefits related to status or length of employment, such as life insurance or certain pension rights, but the grievor has been reinstated to those benefits in this case. The grievor was not entitled to compensation for loss of earnings (broadly interpreted as I have indicated) in respect of the period prior to January 1, 1977. He has been fully compensated (and indeed over-compensated) for the period following that. There is, therefore, no further award of payment to be made in this matter.

(signed) J. F. W. WEATHERILL
ARBITRATOR