CANADIAN RAILWAY OFFICE OF ARBITRATION

SUPPLEMENTARY AWARD TO

CASE NO. 1765

Heard at Montreal, Tuesday, 8 November 1988

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

There appeared on behalf of the Company:

J. B. Bart – Manager, Labour Relations, Montreal
R. R. Paquette – Labour Relations Officer, Montreal
P. D. Morrissey – Labour Relations Officer, Montreal
D. Lussier – Co-Ordinator Transportation, Montreal
P. E. McCarron – Co-Ordinator Terminal Productivity, Montreal

And on behalf of the Brotherhood:

G. Hallé – General Chairman, Quebec
B. E. Wood – Observer

SUPPLEMENTARY AWARD OF THE ARBITRATOR

In the initial award in this grievance the Arbitrator awarded, in part, as follows:

> The claims submitted for deadheading between Stellarton and Truro are therefore to be paid, forthwith.

The Brotherhood submits that the Company has failed to implement the award in that, although it has paid the employees for all deadheading claims filed, it has made no payment with respect to claims for vehicle mileage under Article 66.6 of the Collective Agreement which provides as follows:

> **66.6** When a locomotive engineer is ordered to deadhead on pay, the Company will provide or arrange for transportation. When rail or public transportation is not available and a locomotive engineer is authorized to use his private automobile, he will be reimbursed at the rate of 21 cents per kilometer for the kilometers travelled via the most direct highway route.

The Company s representative argues that claims for vehicle mileage were never submitted prior to the award of the Arbitrator, and should therefore not be payable subsequently. In other words, it appears that after the principal award in this grievance employees filed claims for mileage allowance backdated as far as fifteen months before the award in an obvious attempt to come under the remedial order of the Arbitrator. It is argued on behalf of the Company that it had no prior knowledge of the travel arrangements used by the employees over that period of time, had no claims for mileage made as part of the initial grievance, and is, therefore, in a position where it is impossible to assess the validity of such claims.

There is nothing in the record of the instant case to suggest that at any point prior to the arbitration hearing any specific claim was made on behalf of any employee in respect of the payment of travel allowance under Article 66.6 of the Collective Agreement. The joint statement of issue, which limits the jurisdiction of the Arbitrator, makes

reference only to the alleged violation of Article 114.1 by the Company. It was plainly incumbent upon the Brotherhood to make a claim, at the initial stages of the grievance, for the mileage allowance if it sought a remedy in that regard. That was not grieved, however, and the fact that it may have been discussed in the course of the grievance procedure or raised unilaterally by the Brotherhood in its brief at the arbitration cannot change the limits on the jurisdiction of this Office. There being no valid grievances before the Arbitrator with respect to the payment of travel allowance, at least prior to the date of the initial award in this case, the claims of the Union in that regard, in so far as they pertain to the period before the award, cannot succeed.

I continue to retain jurisdiction.

November 10, 1988

(signed) MICHEL G. PICHER
ARBITRATOR