CANADIAN RAILWAY OFFICE OF ARBITRATION

SUPPLEMENTARY AWARD TO

CASE NO. 1861

Heard at Montreal, Wednesday, 10 May 1989

Concerning

CANADIAN PARCEL DELIVERY

And

TRANSPORTATION COMMUNICATIONS UNION

There appeared on behalf of the Company:

D. Francis	– Counsel, Toronto
F. McMullen	– Director, Human Resources, Toronto

And on behalf of the Union:

H. F. Caley	– Counsel, Toronto
J. J. Boyce	– General Chairman, Toronto
M. Gauthier	– Vice-General Chairman, Montreal

SUPPLEMENTARY AWARD OF THE ARBITRATOR

For the reasons related in **CROA 1864**, in the original award rendered in this file, this Office found and declared that, "... the productivity standards system established within (the Company's) terminals cannot be relied upon as a just and reasonable basis for the assessment of discipline against employees who fail to meet those standards."

This matter has now been brought back on for hearing, at the request of the Union. It alleges that the Company has failed to comply with the finding and declaration of the Arbitrator in this case, by refusing to remove discipline registered against drivers at Vancouver which, it is agreed, was imposed because of their failure to meet productivity standards. The Union seeks an order directing the Company to remove the discipline imposed against all of the employees concerned. The Company, on the other hand, maintains firstly that the Arbitrator is *functus officio*, and cannot add to or amend the declaratory award originally rendered. Alternatively, should the Arbitrator have jurisdiction, the Company maintains that the discipline cases should be heard on their individual merits, through the grievance procedure.

It is well settled that boards of arbitration should conduct their proceedings in furtherance of the statutory purpose of settling the substance of labour disputes during the term of a collective agreement, and should avoid an unduly technical approach to procedures and remedies (*see* ***Blouin Drywall Contractors Ltd.*** *(1973) 4 L.A.C. (2d) 254 (O'Shea), affirmed on judicial review 57 D.L.R. (3d) 199 (Ont. C.A.)*). The Canadian Railway Office of Arbitration was established for the purpose of providing a relatively informal and expeditious system of arbitration to serve the employers and unions within the railway industry in Canada. The format of the hearing, the extensive use of documentary evidence and the generally abbreviated reasons for the Arbitrator's decisions have all evolved in furtherance of that goal. As reflected in the prior awards of this Office, the general understanding and expectation has been that the Arbitrator retains jurisdiction in any case for the purposes, if necessary, of finally disposing of any issue, such as compensation, which may not be dealt with in detail in the original award. While in the normal stream of ad hoc arbitrations outside this Office, it is normal for boards of arbitration to expressly state that they retain jurisdiction in respect of any aspect of a particular grievance, for many years such statements were not made within

the context of the awards issuing from this Office. Notwithstanding the absence of any such statement, however, it appears to have been the consistent view of the parties and the Arbitrator that jurisdiction does continue in respect of the completion of any award.

The foregoing principle is reflected in **CROA 901**. That grievance concerned the dismissal of an employee of CP Rail represented by the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees. Following a hearing on January 12, 1982 Arbitrator Weatherill concluded that the grievance should be allowed and issued the following remedial order:

> For all of the foregoing reasons, it is my conclusion that there was not just cause for the discharge of the grievor. It is my award that the total demerits assessed against his record be reduced to forty-five, and that the grievor be reinstated in employment forthwith, without loss of seniority or other benefits. He shall be entitled to compensation for loss of earnings for the period from and after October 20, 1980, and his disciplinary record shall be effective as of the date of his actual reinstatement.

Subsequently the parties were unable to reach a full agreement with respect to the issue of the appropriate compensation of the grievor in the circumstances of that case. In a supplementary award dated June 13, 1988 Arbitrator Weatherill was called upon to deal, among other things, with the submission of the Company that he was *functus officio* in respect of the grievance and could not resolve the dispute respecting compensation. He rejected the position of the Company in the following terms:

> The first objection raised is that the decision in Case No. 901 was a final one, and that I am accordingly *functus officio*. The award in this matter set out the grievor's general entitlement to compensation but, as is usual in such cases, it did not make any findings or set out any precise award as to the extent of such compensation. To that extent, the award was not complete, and in my view an arbitrator retains and must if necessary exercise jurisdiction to make a final and enforceable award. See, in this respect, the **Consumer's Gas case**, 6 L.A.C. (2d) 61. The award in **Case No. 901**, while "final" on the question of just cause for discipline and reinstatement, did not finally dispose of the issue of compensation, and the Arbitrator does, in my view retain jurisdiction to deal with that matter and to complete the award. The first objection is, accordingly, dismissed.

In the Arbitrator's view the foregoing principles obtain in the circumstances of this case. During the original hearing of this case it appeared to the Arbitrator that the matter was not one merely of principle, but of practical consequences for a number of drivers at Vancouver. In its brief the Union specifically requested "an order that all discipline founded upon such route productivity standards be rescinded and the disciplinary records of all affected employees be amended accordingly." **CROA 1861** was, moreover, pleaded in tandem with **CROA 1864**, which dealt more extensively with the discharge of Driver D. Crawford of Vancouver for failure to meet the productivity standards. The award examined, in some detail, the merits of the productivity standard system established and applied for disciplinary purposes in Vancouver and found both that the system could not be relied upon as establishing just cause for discipline and that, in any event, it had been applied in a discriminatory fashion in that it had not been invoked against employees within the bargaining unit in locations other than Vancouver. On those grounds the grievance was allowed and Mr. Crawford reinstated with full compensation for wages and benefits lost.

Having regard to the way in which this case was initially pleaded, there seems to be little doubt that the object of the policy grievance was to obtain for all drivers the same result, in respect of discipline based on the productivity standards system, as was obtained for Mr. Crawford. In allowing the grievance the Arbitrator recognized, implicitly if not expressly, the entitlement of the Union to the relief which it sought. Proceeding on an assumption of good faith on the part of the employer, it did not appear to the Arbitrator necessary to do more than invoke the reasoning in **CROA 1864** and make a statement to the effect that discipline based upon the productivity standards system could not be relied for the purposes of establishing just cause. It now appears that that award, in so far as its remedial consequences are concerned, remains incomplete. For these reasons, and in keeping with principles reflected in the **Blouin Drywall case** and **CROA 901**, the Arbitrator must reject the position advanced by the Company with respect to any lack of jurisdiction in this matter.

For the purposes of clarity, therefore, and in furtherance of the award herein, the Arbitrator hereby orders the Company to remove, forthwith, from the record of any driver at Vancouver against whom discipline was imposed

based on the productivity standards system, demerits in respect of any such discipline which may have been assessed after the period of time commencing 14 days prior to the filing of the Union's policy grievance in November of 1987. Moreover, the discipline assessed against employee Taylor, specifically grieved by him in May of 1987, as well as further discipline imposed in January and February of 1988, must be treated as removed from his record, insofar as each of those assessments of five demerits was based upon Mr. Taylor's failure to meet the productivity standard found by this Office in **CROA 1864** to be an inappropriate basis for discipline. The Arbitrator therefore further orders the Company to forthwith reinstate Mr. Taylor into his employment with full compensation for wages and benefits, and without loss of seniority, with the fifteen demerits to be removed from his disciplinary record.

While, for the reasons related, it should not be necessary to do so expressly, I continue to retain jurisdiction in respect of the interpretation or implementation of this award.

May 12, 1989

(signed.) MICHEL G. PICHER
ARBITRATOR