

CANADIAN RAILWAY OFFICE OF ARBITRATION
SUPPLEMENTARY AWARD TO
CASE NO. 1928

Heard at Montreal, Tuesday, 11 October 1989

Concerning

CANADIAN PACIFIC LIMITED

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

There appeared on behalf of the Company:

B. Mittleman	– Counsel, Montreal
L. G. Winslow	– Labour Relations Officer, Montreal
L. Guenther	– Assistant Supervisor, Labour Relations, Vancouver
M. E. Keiran	– Assistant Supervisor, Labour Relations, Vancouver
R. Kaplanis	– Observer

And on behalf of the Brotherhood:

M. Gottheil	– Counsel
G. Kennedy	– General Chairman, Vancouver
R. Dellaserra	– General Chairman, Montreal
D. Lacey	– General Chairman, Ottawa
K. Deptuck	– General Chairman, Winnipeg

SUPPLEMENTARY AWARD OF THE ARBITRATOR

This matter has been returned to the Arbitrator by the Brotherhood to facilitate the enforcement of the order issued herein, as contained in the award of July 12, 1989. It is common ground that the Company has moved for a judicial review of that award. It is further not disputed that it has failed to implement the award, both with respect to the reinstatement of Mr. Henderson and the payment of compensation and benefits to him, pending the outcome of the judicial review.

While the Arbitrator remains seized of this matter for the purposes of resolving any dispute respecting the interpretation or implementation of the award, it appears to be common ground that there is little purpose at this time in attempting to define the compensation that would be owing to Mr. Henderson. Apart from the complexity of the evidence that might be involved in resolving that question, the payment of any sums determined might become problematic should the Company's application succeed. In the circumstances, the Brotherhood indicated its willingness to leave that issue in abeyance, without prejudice to its right to pursue it fully before the courts, the Arbitrator's jurisdiction being further retained for the purposes of determination of quantum. With respect to the issue of the reinstatement of Mr. Henderson into his employment, given that the grievor has remained effectively terminated from service since September of 1987, the Brotherhood's counsel confirms its intention to press for immediate enforcement of that aspect of the award, notwithstanding the pending judicial review.

Having regard to the submissions heard, the Arbitrator therefore finds and declares that the Company has refused to implement the order of reinstatement and compensation issued in favour of Mr. Henderson in

the award of July 12, 1989 herein. For the purposes of clarity, the order is contained in the following part of the penultimate paragraph of that award:

... Mr. Henderson shall therefore be reinstated into his employment forthwith, with compensation for all wages and benefits lost, calculated from December 2, 1988 to the date of his reinstatement, subject to the conditions stated hereafter. The compensation payable to the grievor shall, however, be calculated by taking into account all mitigating factors, including the potential mitigation available to him through the offer of alternative employment made to Mr. Henderson by the Company at the time he was removed from his duties as a trackman. The grievor's reinstatement is further conditional upon his agreeing to monitor his own blood sugar levels by means of a memory glucometer, not less than four times daily, and to faithfully log the resulting readings. Both the log kept by the grievor and the recordings of the glucometer are to be submitted both to Dr. Ross, or to another physician mutually acceptable to the parties, as well as to the Company's doctor, through Dr. Ross or such other physician. Such reports shall be made on a frequency to be agreed upon between the parties, failing which it shall be determined by the Arbitrator. Mr. Henderson's reinstatement is further conditioned upon his agreeing to submit to regular medical check-ups with Dr. Ross, or an alternate physician mutually agreeable to the parties, at intervals not to exceed six months, the results of which shall be forwarded to the Company's doctor. Moreover, given the emphasis which the Union has placed on the "buddy system" of work among track maintenance crews as a built-in safety factor, the grievor's reinstatement is further predicated upon his acceptance of the additional condition that he not be assigned to work alone in an isolated location, if the Company should choose to impose such a requirement.

October 12, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR