CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2283

Heard at Montreal, Thursday, 10 September 1992

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Interpretation and application of Clauses 6 and 18 of the Memorandum of Agreement, dated July 12, 1991, referred to as the Conductor Only Agreement.

UNION'S STATEMENT OF ISSUE:

On July 12, 1991, the United Transportation Union and the Canadian National Railway Company signed a Memorandum of Agreement in respect to the operation of certain trains with a crew consist of a conductor only. This Agreement followed extensive negotiations between the parties and assurances were received by the Union from the Company as to how the Company would interpret and apply the provisions of the Agreement in the future. The provisions of the Memorandum of Agreement revised certain provisions of the 4.16 collective agreement regarding the Central Region only and now forms part of the collective agreement. However, the Conductor Only Agreement also stands as an Agreement in and of itself.

Following implementation of the terms and conditions of the Memorandum of Agreement, the Company approached the Local Chairperson at Niagara Falls, to alter the provisions of Clause 6.1(2) by means of a Local Agreement as per the NOTE in Clause 6.1. A meeting was held on 15 October 1991 between the Superintendent of the Southern Ontario District and the Local Chairperson Niagara Falls.

At this meeting, the Superintendent requested relief from the 12 hours stated in Clause 6.1(2) for Niagara Falls crews while at their away from home terminal, MacMillan Yard. Notwithstanding the fact that the Union believes Clause 6.1(2) does not apply to this location, the Local Chairperson was agreeable to accede to the Company's request if additional compensation was provided to the Niagara Falls crews when required to stay beyond the 12 hours while at MacMillan Yard. The Company was not prepared to provide additional compensation beyond the 12 hours, therefore, no Agreement was reached. However, in order to assist the Company the Local Chairperson agreed to allow the Company to hold Niagara Falls [crews] at MacMillan Yard only until the normal advertised departure time of the train, while the Union grieved additional compensation under the provisions of Clause 18 of the Conductor Only Agreement.

This grievance has been progressed in accordance with Clause 18 and is now properly before the Arbitrator.

The Union contends that: **1.)** The provisions of clause 6.1 have not been met. **2.)** It is the Union's position that the Union is entitled to demand different forms of relief including compensation and if unsuccessful may request the Arbitrator to award such. **3.)** The Union relied upon assurances from the Company during negotiations of this Agreement, that the NOTE in Clause 6 would only be utilized in very exceptional circumstances at an away from

home terminal such as Buffalo, which is not present here. 4. The Company cannot force a Local Agreement upon the Union which it does not agree to.

The Company disagrees with the Union's contentions.

FOR THE UNION:

(SGD.) M. P. GREGOTSKI
GENERAL CHAIRPERSON

There appeared on behalf of the Company:

J. B. Bart	– Manager, Labour Relations, Montreal
R. Lecavalier	– Attorney, Law Department
M. E. Healey	– Director, Labour Relations, Montreal
A. E. Heft	– Manager, Labour Relations, Toronto
M. S. Fisher	– Coordinator, Labour Relations, Montreal
D. Brodie	– System Labour Relations Officer, Montreal
M. Delgreco	– Witness

And on behalf of the Union:

H. Caley	– Counsel, Toronto
M. P. Gregotski	– General Chairman, Fort Erie
R. Beatty	– Vice-General Chairman, Hornepayne
G. E. Bird	– Vice-General Chairperson, Montreal
G. J. Binsfeld	– Secretary/Treasurer, G.C.A., Fort Erie
P. Gallagher	– Vice-General Chairman, Fort Erie
C. Hamilton	– General Chairman, BofLE, Kingston

AWARD OF THE ARBITRATOR

In the presentation of the Union's brief it was indicated by the Counsel for the Union that should preliminary position of the Union argued in **CROA 2268** succeed, there would be no need to resolve the instant grievance. As the award in **CROA 2268** has found that the language of clause 6.1(2) of the Conductor Only Agreement does not limit the forms of relief which the Union might seek in negotiations with the Company, and that in any event the dispute mechanism in clause 18.1 is not available to resolve impasses in respect of issues of that kind, it is unnecessary to deal further with this matter. It is therefore terminated, accordingly.

For the purposes of clarity, it should be recorded that the position of the Union in the instant grievance, which appears on its face to accept the arbitrability of disputes over establishing local agreements for relief from the 12 hour layover rule, is an alternative position apparently prompted by the Preliminary Award of the Arbitrator in **CROA 2268**. In the Union's submission in that case, first made in July of 1992, before the filing of the ex parte statement herein, the first and most fundamental point addressed was that the arbitration procedures of clause 18 of the COA are not available to resolve disputes relating to the establishment of local agreements in respect of the 12 hour rule. As that position was sustained in the final award in **CROA 2268**, the alternative position advanced herein need not be dealt with.

September 11, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR