CANADIAN RAILWAY OFFICE OF ARBITRATION

SUPPLEMENTARY AWARD TO

CASE NO. 2447

Heard in Montreal, Thursday, 14 July 1994

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT & GENERAL WORKERS

There appeared on behalf of the Company:

W. D. Agnew	– Manager, Labour Relations, Moncton
O. Lavoi	– Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

T. E. Barron	– Staff Representative, Moncton
J. E. Stanley	– Grievor

SUPPLEMENTARY AWARD OF THE ARBITRATOR

The position argued by the Brotherhood before the Arbitrator is utterly without merit. In the award dated 11 February 1994, the Arbitrator allowed the grievance of Mr. Stanley, in part. It is common ground that he has been on extended leave from service since 1988, to pursue a university degree and, subsequently, a law degree. The award concluded that the Company had failed to communicate sufficiently with Mr. Stanley in May of 1993, at the scheduled conclusion of his leave of absence for law studies, at which time he was seeking to extend his leave for the purposes of completing his period of articles with a law firm in New Brunswick, commencing June 15, 1993. The Company purported to terminate Mr. Stanley in August of 1993, not having heard from him since May. The Arbitrator accepted that there was some confusion in Mr. Stanley's mind, and that he did not intend to abandon or relinquish his employment status. On that basis the Arbitrator directed the reinstatement of Mr. Stanley's employment status and seniority. It does not appear disputed that following that award the parties agreed to the extension of Mr. Stanley's leave of absence for the period of his law articles.

The issue now raised before the Arbitrator, under the guise of a purported disagreement between the parties with respect to the implementation of the initial award, is an entirely different question. The Brotherhood now submits that the failure of communication on the part of the Company in May of 1993 prevented Mr. Stanley from exercising options which would have been available to him as an employee at that time. Significantly, it argues that he was deprived of a subsequent opportunity for an enhanced separation package which became available to employees under the terms of article 7.9 of the Employment Security and Income Maintenance Agreement, as announced on June 8, 1993.

I cannot agree. It is clear on the record before me, and the evidence which I accepted at the initial hearing, that at all material times Mr. Stanley took the position that he was on a leave of absence, and that his leave of absence should be extended for the purposes of the completion of his articles which commenced in June of 1993. He then had no intention of returning to active service with the Company until his articles and bar admission were completed. At

the time of his communication with Company officers in May 1993 there had been no announcement of severance packages, and indeed the offer of severance opportunities which materialized in June appears not to have been known in advance by members of management with whom he was dealing.

As a long term employee, with a university degree and three years of law school completed, Mr. Stanley was not without the means to learn, either through his own efforts or from his bargaining agent the nature of his rights and options in May of 1993. He then opted to remain out of touch with the Company and, understandably, to complete his legal training. As noted, he specifically sought an extension of his leave of absence for that purpose. To that end he grieved and successfully persuaded this Office to reverse his subsequent termination by the Company.

There is nothing in the *ex parte* statement of issue filed in relation to his original grievance to suggest that he had been denied access to the severance package offered to employees by the Company in June of 1993. If it had been Mr. Stanley's intention to return to the ranks of active employees in May of 1993, at a time when he was verbally advised by the Company that his leave of absence would not be extended, he could have easily returned to the ranks, resorting to the "work now - grieve later" principle. He would not, of course, have done so if he felt constrained, as I am satisfied that he did, to proceed immediately to his service at articles.

The terms of article 7.9(e) of the ESIMA are categorical in that they provide for severance payments to be given to "… employees presently on Employment Security status or to **employees who are actively employed** whose separation would result in the removal of an employee from Employment Security status." In June of 1993, Mr. Stanley was not an employee on employment security status and, by his own choice, was not actively employed within the meaning of article 7.9(e) of the ESIMA. There was clearly no obligation on the part of the Company to advise him in May of 1993 of a severance package which was not made known until the following month.

In the circumstances the Arbitrator can see no substance to the submission made on behalf of this person whose expressed wish, ultimately sustained as a result of the decision of this Office, was to continue to be on leave from active employment through and beyond June of 1993, to complete his articles. Nothing done by the Company effectively deprived Mr. Stanley of the ability to resume active employment in May of 1993. Because he chose not to return to work and sought to extend his leave, for obvious reasons of personal advancement, at least to the date of his purported discharge, as communicated to him on August 14, 1993, he remained an inactive employee past the thirty day period during which applications could be filed for the lump sum severance payment by active employees. In the result, I am satisfied that Mr. Stanley is the author of his own fate. There has clearly been no violation of his rights in accordance with the tortured interpretation of events advanced by the Brotherhood.

For the foregoing reasons the grievance must be dismissed.

15 July 1994

(sgd.) MICHEL G. PICHER
ARBITRATOR