CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2510

Heard in Montreal, Wednesday, 13 July 1994

concerning

CANADIAN PACIFIC LIMITED

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS [UNITED TRANSPORTATION UNION]

DISPUTE:

The interpretation and application of Article 1, Clause (m) as it relates to employees re-hired into service covered by the collective agreement.

JOINT STATEMENT OF ISSUE:

On June 9, 1993, Canadian Pacific Limited re-hired several employees at Smiths Falls, Ontario. These employees had previously worked for the Company, but had severed their employment relationship under the terms of Article 9A.

These individuals were defined as new employees by the Company and paid 85% of the full rate, as per Article 1(m).

The Union submits that the purpose of Article 1(m) was in recognition of an apprenticeship concept. There is within the formula an implicit recognition that the wages of an employee are to be commensurate with his or her experience in the service of the Company. Furthermore, these employees required no refresher courses, trial trips, etc. Their prior qualifications as Conductor and Yard Foreman were immediately recognized upon their return to service.

The Union has requested that employees re-hired into Company service at Smiths Falls be compensated at a rate that recognizes their prior service. Further, that they be compensated for any earnings lost as a result of working at a lesser rate.

The Company has declined the Union's request.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) D. A. WARREN	(SGD.) R. WILSON
GENERAL CHAIRMAN	FOR: GENERAL MANAGER, OPERATIONS & MAINTENANCE

There appeared on behalf of the Company:

R. Wilson	– Manager, Labour Relations, Toronto
H. B. Butterworth	– Labour Relations Officer, IFS
G. E. Johnson	– Manager, Operations, Medicine Hat, Alberta

And on behalf of the Union:

S. Keene	– Vice-General Chairperson, London
D. A. Warren	– General Chairperson, Toronto
J. N. deTilly	– Vice-General Chairperson, Montreal
V. Hamilton	– Secretary, GCA, Toronto

T. G. Hucker	– National Vice-President, BofLE, Ottawa
R. S. McKenna	– General Chairman, BofLE, Calgary
D. C. Curtis	– General Chairman, BofLE, Ottawa
Wm. Foster	– Vice-General Chairman, BofLE, London
S. Reed	– Provincial Legislative Chairman, BofLE, Moose Jaw

AWARD OF THE ARBITRATOR

The Arbitrator cannot sustain the position advanced by the Union. It is clear that the employees who are the subject of this grievance had the benefit of severance payments at the time they freely chose to terminate their employment with the Company. Their severance was subject to the Conductor-Only Agreement, which contains a question and answer portion. Question and answer 5.16, intended to clarify for employees their possible future status, as agreed by the parties, reads as follows:

> **Q.** Can I take a severance and then hire back on?
>
> **A.** Yes, as a new employee when, at some future time there is a requirement for additional employees.

In the Arbitrator's view the language of the foregoing is clear, and employees know, or reasonably should know, that upon re-hire they are to be treated as new employees for the purposes of the collective agreement. Article 1(m) of the collective agreement provides particular wage rates for new employees. I cannot see any basis on which they can be treated other than under the terms of that article, having regard to the contractual language adopted by the parties. Nor can I see how they could, for example, be in a better position in respect of their wages than experienced railroaders newly hired after service with another railway. There is simply no language in the collective agreement to sustain the Union's interpretation. In the Arbitrator's view the language of the agreement under consideration is substantially different from that considered by this Office in **CROA 2344**, a case relied upon by the Union.

For the foregoing reasons the grievance must be dismissed.

15 July 1994

(signed) MICHEL G. PICHER
ARBITRATOR