# CANADIAN RAILWAY OFFICE OF ARBITRATION

# CASE NO. 2650

Heard in Montreal, Thursday, 13 July 1995

concerning

## CANADIAN PACIFIC RAILWAY COMPANY

and

## CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS (BROTHERHOOD OF LOCOMOTIVE ENGINEERS)

**DISPUTE:**

The dispute in this case concerns the amount of the separation opportunity of Locomotive Engineer J.L. McInnis, as well as the interpretation and application of the memorandum of agreement signed between CP Rail and the Canadian Council of Railway Operating Unions (BLE) with respect to the closure of the St. Luc Hump.

**JOINT STATEMENT OF ISSUE:**

Locomotive Engineer J.L. McInnis applied for the attrition and separation opportunities as per Bulletin No. 196 in November 1993, following the St. Luc material change.

Mr. McInnis was informed in November 1993, that he was a successful applicant as per Bulletin No. 196. Mr. McInnis was given a figure of $69,000.00 by the Company and, based on that information, opted for retirement.

On February 28, 1994, Mr. McInnis was advised by the Company that an error had occurred in the calculation of his figure, and a letter with the corrected figures was forthcoming. On March 1, 1994, Mr. McInnis received a letter stating that the corrected figure was $32,141.00. Mr. McInnis was afforded the option of retiring with the corrected amount, or returning to work with his vacation credits intact.

On March 2, 1994, the Company contacted Mr. McInnis advising him a meeting was scheduled to explain the errors in their figures. After all of the calculations had been redone correctly, Mr. McInnis was entitled to $50,862.00, under the terms and conditions of the St. Luc Hump Agreement. Mr. McInnis was offered an opportunity to return to active service with his vacation credits intact, but elected to continue with his retirement. Mr. McInnis accepted the $50,862.00, but initiated a grievance claiming the original figure of $69,970.00

The Union has requested the payment of the difference between the original figure of $69,970.00 and the revised figure of $50,862.00, to Mr. McInnis.

The Company has declined the Union's request.

| **FOR THE COUNCIL:** | **FOR THE COMPANY:** |
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| **(SGD.) R. S. McKENNA** | **(SGD.) R. E. WILSON** |
| **GENERAL CHAIRMAN** | **FOR: GENERAL MANAGER, OPERATIONS & MAINTENANCE, IFS** |

There appeared on behalf of the Company:

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| R. E. Wilson | – Manager, Labour Relations, Toronto |
| D. L. Johnson | – Benefit Plans Officer, Montreal |

And on behalf of the Council:

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| R. S. McKenna | – General Chairman |
| Wm. Foster | – Sr. Vice-General Chairman, London |

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| T. G. Hucker | – International Vice-President, BLE, Ottawa |
| D. C. Curtis | – General Chairman, Calgary |
| D. A. Warren | – General Chairman, CCROU[UTU], Toronto |
| B. Brunet | – Vice-General Chairman, Montreal |
| R. McLellan | – Local Chairman, Montreal |
| J. Flegel | – Sr. Vice-General Chairman, Saskatoon |
| J. Brunet | – Local Chairman, Montreal |
| J. L. McInnis | – Grievor |

## AWARD OF THE ARBITRATOR

It is not disputed before the Arbitrator that the grievor's correct entitlement in respect of the early retirement separation incentive paid to him is $50,862.00. That amount was ultimately paid to Mr. McInnis, at which point he voluntarily chose to separate from the Company.

There can be no dispute that two prior figures given to the grievor, the first being $69,970.00 and the second being $32,141.00, were plainly in error. There is no argument made to the Arbitrator by the Council that the grievor is contractually entitled to a severance payment of $69.970.00. The sole basis of the grievance is the Council's argument that the grievor should be entitled to that amount by the operation of the doctrine of estoppel.

The elements of the doctrine of estoppel, as correctly presented by the Council, are as follows:

**(1)** a representation made by the Company either verbally or by conduct to the employee;

**(2)** an intention on the part of the employer that the representation would be relied upon by the employee;

**(3)** actual reliance on the representation by the employee; and,

**(4)** detriment suffered by the employee as a result of his reliance.

(*Re Consumer Glass and Aluminum & Glass Workers (1986), 24 L.A.C. (3d) 309 (Stanley)*)

What, then, does the evidence disclose with respect to any injurious or detrimental reliance suffered by Mr. McInnis? In the Arbitrator's view the evidence is devoid of any negative consequence visited upon Mr. McInnis by the Company's error. The most that the evidence shows is that when he was advised that he would be entitled to a separation payment of $69,970.00, Mr. McInnis decided to take the option offered, and placed his house on the market for sale. The sale of his home was never consummated, however, and his house was withdrawn from the market, apparently in light of the subsequent events. The grievor was eventually placed in the same position as he would have been in had the Company correctly calculated his separation entitlement in the first place. He received the monies to which he was contractually entitled and, indeed, because of the initial error, was given the option of rescinding his first election, and continuing to work to his normal retirement eligibility, without any penalty in terms of vacation entitlement. The Arbitrator finds it impossible to conclude that in these circumstances there is any detrimental reliance proved on the behalf of Mr. McInnis which would sustain the application of the doctrine of estoppel. He received the monies to which he was properly entitled and he suffered no adverse impact in respect of his home. As regrettable as the Company's error and the events concerning his retirement plans may be, the Arbitrator is without jurisdiction in such circumstances to award damages which would be tantamount to a penalty payment beyond the grievor's contractual entitlement. It should also be noted that the Company has been frank and forthcoming in respect of the error committed, and again expressed regret for its error to Mr. McInnis at the arbitration hearing.

On the whole of the material before me, therefore, I cannot find a violation of the grievor's collective agreement rights, nor of his rights under the St. Luc Hump Material Change Agreement. Most significantly, there is nothing in the evidence before me which would sustain the argument of the Council that the grievor should be entitled to the amount claimed on the basis of the operation of the doctrine of estoppel.

For all of these reasons the grievance must be dismissed.

July 14, 1995

**(signed) MICHEL G. PICHER**
**ARBITRATOR**