SUPPLEMENTARY AWARD TO CASE NO. 2749

Heard in Montreal, Wednesday, 10 July 1996

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA)

There appeared on behalf of the Company:

J. B. Bart – Manager, Labour Relations, Montreal

And on behalf of the Union:

A. S. Wepruk – National Coordinator, Montreal

SUPPLEMENTARY AWARD OF THE ARBITRATOR

This matter was reconvened for hearing as a result of the allegation of the Union that the Company has failed to implement the Arbitrator's award of June 14, 1996. Specifically, the Union objects to the actions of the Company, which are generally consistent with the penultimate paragraph of the award, in transferring the CargoFlo employees to Intermodal service and to increase the complement of Intermodal employees, as a means of maintaining the same overall number of positions, thereby avoiding a violation of article 20.1 of the collective agreement.

The Arbitrator is satisfied that the Union is correct in its submission that the Company has failed to provide the 120 day notice which, it is not disputed, is required prior to the implementation of the Company's initiative. The Arbitrator cannot find that the notice of April 9, 1996, which was itself in violation of the provisions of the collective agreement as found in the award of June 14, 1996, is proper notice for this purpose. The Arbitrator therefore directs that the Company provide to the Union a notice of a full 120 days, to commence no earlier than the date of this award, prior to the implementation of its decision to contract out the CargoFlo operation, while simultaneously increasing the complement of Intermodal employees so as to avoid any reduction in the number of full time employees in the bargaining unit.

Secondly, the Arbitrator appreciates the concerns which the Union voices with respect to the possibility that the employees being transferred may subsequently find Intermodal positions eliminated, with a resulting reduction in the number of bargaining unit employees, contrary to the intention of article 20.1 of the collective agreement, by reason of an arbitrary decision of the employer with respect to future downsizing. There is no basis to believe that the Employer harbours any such intention. However, to protect against that possibility, having regard to the agreement of the parties expressed before the Arbitrator at the hearing, the Arbitrator directs that the Union be provided, forthwith, with full and accurate data as to the volumes of cargo handled in the Intermodal facility as of July 15, 1996, or any other date or period which may be agreed between the parties. The correlation of that volume of cargo with the

complement of employees will, as a result, be available as a benchmark of evidence, in the event of any dispute in the future with respect to any alleged indirect violation of article 20.1 of the collective agreement. To put the matter clearly, if the Company should seek to downsize the complement of bargaining unit employees at the Montreal Intermodal facility in circumstances where there has been no meaningful change in cargo volumes, in the future, it will bear an onus to justify such action should the Union allege that it has in fact pursued a transparent scheme to avoid the application of article 20.1 of the collective agreement.

This matter is therefore remitted to the parties for implementation of the notice period and the providing of data, as directed above.

July 12, 1996

(signed) MICHEL G. PICHER ARBITRATOR