CANADIAN RAILWAY OFFICE OF ARBITRATION

2nd 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)

DISPUTE:

The implementation of CROA award No. 2749.

UNION'S STATEMENT OF ISSUE:

In the above cited award, rendered in June 1996, the Arbitrator held that the Company, in seeking to reduce the number of full-time positions at its Monterm facility by eleven (11) positions as a result of the contracting out of the Cargo-Flo operation, was in violation of article 20.1 of the Supplementary Intermodal Agreement between the parties. The Arbitrator ordered the violation to cease and retained jurisdiction "should this matter need to be spoken to further".

The Cargo-Flo work continues to be contracted out to date.

In February 1999, the Company advised the Union of its intention to reduce the full-time complement at Monterm by 27 positions. The Union requested detailed information as to the reasons for these abolishments, indicating to the Company its concern that some of these abolishments might, in fact, be an effort to eliminate a number of positions corresponding to those which the Company unsuccessfully sought to eliminate in July 1996. To date, this information has not been forthcoming.

The Union submits that, under the circumstances now prevailing, the Company's proposed reduction of 27 positions is inconsistent with the Arbitrator's award in CROA 2749, being merely a delayed reduction of the full-time complement which was then temporarily suspended in the fact of the issuance of the award.

The Company denies the Unions contention and claim.

FOR THE UNION:

(SGD.) N. PITCHEN
FOR: NATIONAL REPRESENTATIVE

There appeared on behalf of the Company:

D. S. Fisher	– Director, Labour Relations, Montreal
R. K. MacDougall	– Counsel, Montreal
A. Y. deMontigny	– Manager, Labour Relations. Montreal
D. Gagné	– Manager, Intermodal Operations, Montreal
M. Vachon	– Senior Terminal Coordinator, Montreal

And on behalf of the Union:

A. Rosner	– National Representative, Montreal
D. Boiteau	– Local President, Montreal
Y. Surducan	– Local Vice-President, Montreal
J. Savard	– National Representative, Montreal

SUPPLEMENTARY AWARD OF THE ARBITRATOR

The Union alleges a violation of article 20.1 of the Supplementary Intermodal Agreement and a failure to comply with the direction of the Arbitrator issued in the initial award herein dated June 14, 1996. At the outset of the hearing the Company made a preliminary submission with respect to the admissibility of evidence sought to be adduced by the Union. In particular, the Union issued a subpoena *duces tecum* which required the production of data respecting traffic volume at the Monterm facility, on a monthly basis from July of 1996 to the present day. The Company maintains that an agreement reached with the Union following the first supplementary award herein dated July 12, 1996, signed by the Company on March 17, 1997, would preclude the Union's ability to obtain such information in these proceedings.

Upon a review of the agreement, and the submissions of the parties, the Arbitrator ruled that the Company's preliminary position could not prevail. The agreement provides, in part, as follows:

> **2.** Consequently, the parties recognize and agree that CN is under no legal obligation to provide CAW with any traffic volume data and that no enforceable conclusion is deemed to have been reached by the arbitrator on the use of such data and on any burden of proof.

As is evident from the agreement itself, the parties arrived at an understanding whereby the Company would be liberated from any ongoing obligation, on a month to month basis, to provide to the Union information in respect of traffic volumes at Monterm. The parties also sought to eliminate any possible suggestion in the Arbitrator's supplementary award which would place an onus upon the Company to justify the downsizing of the complement of bargaining unit employees at the Montreal intermodal facility in circumstances where cargo volumes may not have declined. What the agreement does not do, in my view, is to compromise or limit the ability of the Union to seek, by subpoena or otherwise, information in respect of traffic volumes for the purposes of a subsequent dispute, whenever that might arise. To interpret the agreement, as the Company would, as an eternal waiver of any right to information on the part of the Union for all future purposes is plainly beyond the intent and language of the parties' understanding. On that basis the Company's preliminary objection was denied.

The thrust of the dispute concerns the elimination of positions from the Monterm facility. In particular, the Union questions whether eleven positions which would be bargaining unit positions but for the contracting out of the Cargo-Flo work, are among the positions being downsized. That, it maintains, is in direct violation of the limit on complement reduction through contracting out contained in article 20.1 of the Supplementary Intermodal Agreement as interpreted in the awards of this Office in **CROA 2749** and **2887**.

Upon a review of the materials I am satisfied that the Union's case is not made out. The facts reveal that on October 20, 1998 the Company announced sweeping workforce reductions system-wide, totalling some 3,000 positions. It eventually became evident that that would include some 1,075 positions in the Union's bargaining unit. Of that number twenty-seven were eventually identified for elimination at the Monterm intermodal facility. The reductions to be so affected were deemed the result of an operational or organizational change effective February 4, 1999. The Union takes the position that eleven of the positions being eliminated are in effect positions which are protected by the initial award in this matter. That is to say they are positions which are allegedly being eliminated as a consequence of the original contracting out of Cargo-Flo operations.

The Arbitrator cannot agree. The material and data adduced in evidence by the Company confirm that the Monterm facility has long recorded abnormally low rates of productivity and efficiency, as compared with other intermodal terminals within the Company's system. The decision of October 30, 1998 necessitated the implementation of system wide job reductions. The material before the Arbitrator reflects, in part, that labour costs were relatively higher in the Monterm facility, as compared with other locations. While the higher per unit labour cost at the Monterm facility may, to some extent, be explained by circumstances particular to that location, such as

the garage facility and the handling of empty containers by bargaining unit employees, there is nevertheless evidence before the Arbitrator which establishes, on the balance of probabilities, that the Company faced a need to reduce its labour complement in the Monterm facility and that greater reductions in the working complement at that location would be necessary to bring the costs of the Monterm operation more closely into line with intermodal operations elsewhere on the Company's system.

It is, to be sure, a difficult task to correlate cause and effect when a complex corporate organization down-sizes to eliminate jobs, while also contracting out under conditions which cannot result in a reduction in the number of full time bargaining unit employees. There are obviously circumstances in which the cause and effect analysis can be made in a simple and straight-forward way, as reflected in **CROA 2887**. While the instant case is admittedly more complex, I am satisfied that the Union has not discharged the onus of establishing a causal link between the elimination of the eleven positions which are the subject of this dispute, and the contracting out of Cargo-Flo operations. There is nothing in the language of article 20.1 which protects the Union or its members against complement reductions which flow entirely from operational or organizational change unrelated to contracting out. That, I am satisfied, is what has happened in the case at hand.

The grievance must therefore be dismissed.

October 19, 1999

(signed) MICHEL G. PICHER
ARBITRATOR