CANADIAN RAILWAY OFFICE OF ARBITRATION

SUPPLEMENTARY AWARD TO

CASE NO. 2807

Heard in Montreal, Thursday, 11 December 1997

concerning

ONTARIO NORTHLAND RAILWAY

and

UNITED TRANSPORTATION UNION

There appeared on behalf of the Company:
M. J. Restoule – Manager, Labour Relations, North Bay

And on behalf of the Union:
K. L. Marshall – General Chairman, North Bay

AWARD OF THE ARBITRATOR

The parties are disagreed as to the calculation of the grievor's incumbency. The Company has applied a formula whereby the weeks during which the grievor was out of service by reason of his discharge, subsequently converted to a suspension by the Arbitrator, should be averaged in for the purposes of the calculation. The Union submits that the grievor's incumbency should be calculated rateably, based on the seven pay periods which he did in fact work during the fifty-two week period in question.

The conductor-only agreement between the parties contains a provision dealing with situations in which a rateable formula is to apply. Article 6.8(b) reads as follows:

> **6.8 (b)** When computing "basic weekly pay" pursuant to paragraph (a) above, any pay period during which an employee is absent for seven consecutive days or more because of bona fide injury, sickness in respect of which an employee is in receipt of weekly indemnity benefits, authorized leave of absence, or laid off without Employment Security Benefits, together with the earnings of an employee in that pay period, shall be subtracted from the twenty-six (26) pay periods and total earnings. In such circumstances "Basic weekly pay" shall be calculated on a pro-rated basis by dividing the remaining earnings by the remaining number of pay periods.

In the Arbitrator's view in the instant case the grievor should be in no worse a position than is contemplated for an employee who is on an "authorized leave of absence". The phrase "authorized leave of absence" can be many faceted, and encompass a number of different situations. It can, in the obvious case, involve a pre-agreed arrangement whereby a person absents himself or herself from work for a period of time, without forfeiting their employment relationship. It seems to the Arbitrator, however, that it can also be construed to properly include an employee who is removed from work by reason of a disciplinary suspension. Such an individual is obviously absent from work, under the direction and authorization of the employer, albeit for disciplinary reasons, without forfeiting his or her employee status.

While this matter is obviously not without some difficulty, it appears to the Arbitrator that to construe the phrase "authorized leave of absence" to include the suspension of the grievor, a suspension imposed by the direction of this arbitrator, is in keeping with both the spirit and language of paragraph 6.8(b) of the Conductor-Only Agreement. Incumbencies, as a general matter, are intended to provide protection for employees based on the level at which they have maintained their earnings while in active employment, based on their willingness to undertake work

opportunities. That being so, it is more in keeping with that purpose, and in my view with the language of article 6.8(b) of the Conductor-Only Agreement, to predicate the grievor's protection on the level of his earnings during those rateable periods he was in fact at work.

For the foregoing reasons the Arbitrator determines that the interpretation of the grievor's incumbency level advanced by the Union is correct. Based on the foregoing, the grievor is to be paid at the rate of his incumbency level set at $4,201.25 per twenty-eight day period.

I continue to retain jurisdiction in the event of any further dispute.

December 15, 1997

(signed) MICHEL G. PICHER
ARBITRATOR