

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**SUPPLEMENTARY AWARD TO**  
**CASE NO. 2821**

Heard in Montreal, Thursday, 12 February 1998

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

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

Based on the parties' written submissions and a conference call. Present on the call were:

M. G. Picher	– Arbitrator
D. Olshewski	– National Representative, CAW, Winnipeg
D. Lanthier	– Labour Relations Officer, CNR, Edmonton

**SUPPLEMENTARY AWARD OF THE ARBITRATOR**

The parties have referred this matter back to the Arbitrator to resolve a dispute with respect to the alleged entitlement of the grievor, Mr. Anthony DeRose, to the benefits of the Employment Security and Income Maintenance Agreement pursuant to a notice issued under article 8 of the agreement, the effect of which was to abolish the position which the grievor previously held, prior to his discharge for the accumulation of demerits.

As reflected in the award herein dated January 20, 1997, the grievor was discharged following the assessment of twenty demerits for poor work performance and insubordination. When those demerits were added to his previous record of fifty demerits, he was found to be dismissable. The Arbitrator concluded that the allegation of poor work performance must be viewed as a nullity, by reason of a flaw in the investigation process. The insubordination charge, however, was sustained. That is significant for the resolution of this dispute, as it is clear that there is no conclusion on the record that the discharge of Mr. DeRose was a nullity at the time it was made. On the contrary, as a review of the award indicates, the Arbitrator found that there were grounds for discipline, but determined to exercise his discretion to substitute a lesser penalty. On that basis it was directed "... that the grievor be reinstated into his employment, without loss of seniority and without compensation for wages and benefits lost."

The Arbitrator is compelled to accept the submission of the Company with respect to the entitlement of the grievor to the benefits of the Employment Security and Income Maintenance Agreement in the circumstances disclosed. By reason of the discipline assessed against him, Mr. DeRose did not hold a permanent position at the time of the article 8 notice. On that basis, he is not entitled to the protections of the Employment Security and Income Maintenance Agreement, as they might relate to the abolishment of the position which he previously held. A contrary result might be found if the arbitration award had concluded that there was no basis for his discharge at the time, or that the discipline issued against him was a nullity from the outset. That is not what transpired, however. In the circumstances the grievor cannot be analogised to an employee who, for example, was on a medical leave of absence at the time of the article 8 notice.

For all of the foregoing reasons the Arbitrator sustains the interpretation of the Company, and declares that the grievor is not entitled to the buy-out option claimed under the Employment Security and Income Maintenance Agreement. I continue to retain jurisdiction in the event of any further dispute.

February 16, 1998

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