

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

SUPPLEMENTARY AWARD TO

CASE NO. 3250

Heard in Calgary, Tuesday, May 14, 2002

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED STEELWORKERS (LOCAL 2004)

DISPUTE:

The implementation of the arbitrator's award in CROA No. 3250.

JOINT STATEMENT OF ISSUE:

In the above mentioned award, the Arbitrator, allowing the grievance in part, made the following declaration and order:

The grievance is therefore allowed, in part. The Arbitrator remits this matter to the parties for further discussion consistent with the above, to implement an adjustment in the grievor's demotion to allow him to perform work in the category of Machine Operator Group 1, so long as he does not undertake any assignment which requires him to hold a track occupancy permit. The grievor shall also be subject to maintaining ongoing treatment and periodic assessment of his condition of depression with his own physician, with appropriate reports to be provided to the Company on a quarterly basis, or with such other frequency as may be agreed between the parties. The grievor's return to Machine Operator Group 1 classification shall also be conditioned upon his undertaking to follow any course of medication prescribed to him by his physician. The failure of Mr. Cartier to honour these conditions shall make him liable to further discipline. Should the parties be unable to agree on any aspect of the implementation of this award the matter may be spoken to.

On July 17, 2006, the Union provided the Company with a medical update from Mr. Cartier's physician and requested that the parties meet to discuss Mr. Cartier's restrictions. The parties met to review the matter on July 27 and August 4, 2006. On September 8, 2006 the Company provided the Union with a proposal providing for the progressive relaxation of Mr. Cartier's disciplinary restrictions. On October 24, 2006, the Union advised the Company that it

was not in agreement with the proposal, primarily due to the length of the timeframe over which the restrictions would be lifted.

The Union's position is that Mr. Cartier's current medical condition allows him to return to his former positions and that the disciplinary restrictions still on his record should be removed to allow him to do so.

The Company disagrees with the immediate removal of the disciplinary restrictions and has declined the Union's request.

FOR THE UNION:

(SGD.) A. KANE
STAFF REPRESENTATIVE

FOR THE COMPANY:

(SGD.) D. BRODIE
FOR: VICE-PRESIDENT LABOUR RELATIONS

On Thursday, 13 December 2007 in Montreal, there appeared on behalf of the Company:

D. Brodie – Manager, Labour Relations, Edmonton
A. DeMontigny – Sr. Manager, Labour Relations, Montreal

And on behalf of the Union:

A. Kane – Staff Representative, Vancouver
P. Jacques – Chief Steward, Local 2004
L. Cartier – Grievor

SUPPLEMENTARY AWARD OF THE ARBITRATOR

By the Arbitrator's award herein of May 21, 2002 the grievor was returned to service subject to a demotion. That demotion was imposed for medical reasons, as the grievor then suffered a condition which, untreated, created a hazard should he be placed in a position which required him to hold a Track Occupancy Permit. The award also directed that the grievor be subject to ongoing treatment and periodic assessment.

As reflected in a letter June 22, 2006, the specialist responsible for the ongoing treatment of Mr. Cartier confirmed that he has responded well to treatment and is now fully able to return to all duties, on an unrestricted basis, as regards his previous condition. As the awards of this Office, including **CROA 3250**, must be subject to the

conditions of the **Canadian Human Rights Act**, it is clear that any restriction which were attached to the grievor's medical condition can no longer be operative, insofar as that medical restriction is no longer an issue. The Arbitrator therefore allows the position of the Union, and declares that the restrictions as described in **CROA 3250** are no longer in effect, and that to that extent the grievor is entitled to return to full duties, including duties which would require him to hold a Track Occupancy Permit.

During the course of the hearing, however, it became apparent that there may be a subsequent medical report, concerning a separate medical condition, which raises questions about whether there is a safety concern should the grievor operate certain machinery or hold a Track Occupancy Permit. The details of that medical opinion were not known to parties at the hearing, as it appears to have involved confidential correspondence between the grievor's physician and the Company's medical health branch. This award is therefore subject to the parties obtaining a release from Mr. Cartier, examining the correspondence referred to above and determining whether there is or is not any further medical restriction which would restrict the work which the grievor can perform. I retain jurisdiction with respect to that issue, should the parties be unable to resolve it.

December 14, 2007

(signed) MICHEL G. PICHER
ARBITRATOR