

CANADIAN RAILWAY OFFICE OF ARBITRATION

SUPPLEMENTARY AWARD TO

CASE NO. 3331

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**TEAMSTERS CANADA RAIL CONFERENCE
(BROTHERHOOD OF LOCOMOTIVE ENGINEERS)**

SUPPLEMENTARY AWARD OF THE ARBITRATOR

The Union's representative has requested the Arbitrator to issue further remedial direction in this matter. He maintains that the Company has engaged in repeated violations of the collective agreement by using locomotive engineers off their assigned territory to rescue trains. In that regard he alleges violations of article 61 and Addendum No. 86 on June 20, November 22, and December 15, 2003 as well as January 20, February 14 and March 11, 2004. On that basis he now seeks an affirmative cease and desist order from the Arbitrator with a view to proceeding towards the enforcement of the award herein through contempt proceedings in the Courts.

The Company's representatives acknowledge the violations referred to above. They submit, however, that the violations are in fact isolated cases involving errors in judgement, and not a conscious disregard of the Arbitrator's award. They stress that a

recent letter confirming the interpretation found in the award was issued recently by the Company's Senior Vice-President for Western Canada, Mr. Peter Marshall. They also note that there has been no apparent violation of the article in question for a period of some three months, as of the date of this award. Finally, it does not appear disputed that the parties have resolved the monetary aspect of compensation for each of the violations which has occurred since the award in this matter issued on April 11, 2003.

The Arbitrator well understands the frustration which prompts the position of the Union. I also appreciate the difficulty which may be encountered by an employer within any large corporation concerning the precise administration of a collective agreement provision in various locations of its operation. More fundamentally, however, the Arbitrator is compelled to conclude that for the purposes of fashioning any remedy in respect of the instant grievance he is *functus officio*. As is clear from the final paragraph of the award, the Arbitrator judged that a declaration, and nothing more, would be an appropriate remedy in the circumstances. Although the Arbitrator retained jurisdiction respecting "... the interpretation or implementation of this award.", this Office is without jurisdiction to reconsider or amend the remedy fashioned in the original award. (**Re Consumers Gas Co. and International Chemical Workers' Union, Local 161** (1974) 6 L.A.C. (2d) 61 (Weatherill); **Re Thunder Bay Regional Hospital and International Union of Operating Engineers, Local 856** (2002) 108 L.A.C. (4th) 184 (Briggs).) It does, of course, remain open to the Union to raise the record in the instant file in the event of any future violation of the same provision of the collective agreement as a factor which may go to remedy in such a future case. For the purposes of this file,

however, the award is complete and the Arbitrator is without jurisdiction to make any further directions.

For these reasons the request of the Union must be declined.

July 13, 2004

(signed) MICHEL G. PICHER
ARBITRATOR