# CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

# SUPPLEMENTARY AWARD TO

# CASE NO. 3464

Heard in Montreal, Wednesday, 14 December 2005

Concerning

## CANADIAN NATIONAL RAILWAY COMPANY

and

## UNITED TRANSPORTATION UNION

**DISPUTE:**

The Company's failure to implement the Arbitrator's decision in *CROA 3464.*

**UNION'S STATEMENT OF ISSUE:**

The Union's grievance with respect to the advertisement and awarding of early retirement credits pursuant to Addendum 31 of Agreement 4.3 was allowed in the arbitrator's decision in CROA case no. 3464.

In spite of the Union's success at arbitration, the Company has failed to provide the information required to determine which credits are still available for surpluses at terminals across Canada. As well, the Company still refuses to recognize genuine surpluses that exist at terminals across the Western Lines, per the criteria for "genuine surpluses" provided by the arbitrator in his decision.

It is the Union's position that the Company's ongoing refusal to award retirement credits to terminals with genuine surpluses violates the collective agreement, and breaches the arbitrator's orders in CROA case no. 3464.

**FOR THE UNION:**

**(SGD.) R. A. HACKL**
**FOR: GENERAL CHAIRPERSON**

There appeared on behalf of the Company:

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| K. Morris | – Manager, Labour Relations, Edmonton |
| B. Laidlaw | – Manager, Labour Relations, Winnipeg |
| R. B. Smith | – Assistant Superintendent, Transportation, Winnipeg |

And on behalf of the Union:

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| M. Church | – Counsel, Toronto |
| B. Boechler | – General Chairperson, Edmonton |
| R. Hackl | – Vice-General Chairperson, Edmonton |
| J. W. Armstrong | – Vice-President, Edmonton |
| R. Armstrong | – Local Chairperson, Rainy River |

## SUPPLEMENTARY AWARD OF THE ARBITRATOR

The parties have been unable to agree on the implementation of the remedy flowing from the award herein dated January 17, 2005. Specifically, they are disagreed as to what constitutes a surplus for the purposes of the Company's obligation to bulletin enhanced retirement credits at a given terminal. Having heard the submissions of the parties, the Arbitrator provides the following clarification.

The Arbitrator cannot sustain the interpretation put forward by the Company to the effect that there is no surplus at a given terminal if it can force the employees in question to protect work elsewhere on the seniority district. For reasons which they best appreciate, the parties determined that the existence of a surplus and the granting of early retirement credits was to be done on a terminal by terminal basis. It is that understanding which, I am satisfied, governs the determination of whether there is a surplus for the purposes of Addendum No. 31 of the collective agreement. I accept the submission of the Union that if a condition of surplus at a given terminal is the objective factor which, for example, allows the Company to compel employees to protect work at other terminals on the seniority district, it is that same determination of a surplus condition which also triggers the obligation to bulletin such early retirement opportunities as may still remain at that terminal under the original terms of the conductor only agreement. In the Arbitrator's view that flows from the language of Addendum No. 31, and in particular is reflected in the language of paragraph (4) which mandates that early

retirement opportunities are to be made available "… on a terminal by terminal basis" at each change of card.

However, different considerations apply with respect to two alternative scenarios argued by the Union to be evidence of a surplus. Its counsel submits that where employees voluntarily bid to a shortage at another terminal, as happened in relation to positions in Sioux Lookout successfully bid by two employees from Rainy River/Fort Frances, the conclusion must be that there was a surplus of employees at Rainy River/Fort Frances, since the ability to bid out is conditioned on not creating a shortage at the home terminal. Secondly, the Union argues that the shifting of work on an extended run subdivision by the application of the Whiteman formula, whereby employees from one terminal do a percentage of work otherwise belonging to another terminal, is likewise evidence of a manpower surplus.

The Arbitrator cannot agree that either of the above situations constitutes, of itself, conclusive proof of a surplus at the given terminal. The allocation and distribution of work is a complex matter, particularly in the working of a multi-location continuous operation such as a railway. Subject to any contrary provision of a collective agreement, its is the right of the employer to determine how many employees will be utilized to perform work at a given location. The fact, for example, that the Company might feel it necessary to fill a vacancy at one terminal by bid from employees at another terminal does not of itself confirm a surplus of employees at the second terminal. The employer may have the latitude to re-organize the work to be done in such a way as to cover off the situation at the terminal from which an employee bids away. Similarly, the assignment of employees at one terminal to cover the work which normally belongs to the employees at another, through the Whiteman formula, does not of itself prove the existence of a surplus at the first home terminal. Again, it may reflect a deployment of forces best suited to achieve the Company’s immediate needs, without constituting a surplus.

The concept of a surplus, like a vacancy, is one of precise meaning and significant importance under a collective agreement, and indeed under the terms of Addendum No. 31, prompted by the introduction of conductor only operations. There can be little doubt, for example, that an employee who is on a furlough board is surplus, as there is no regular assignment to which he or she can be deployed. The fact that an employee on a furlough board can be forced to protect service elsewhere on the seniority territory, under the terms of article 148.11, does not change the fact that the employee in question is surplus to his home terminal, even if he or she is forced to protect work elsewhere. Additionally, a surplus situation must be found to exist where non-protected employees are laid off or forced elsewhere, or when spareboards are artificially inflated beyond the level appropriate to the available work.

The Arbitrator does not, however, agree that the redeployment of the workforce, often on a temporary basis, to deal with a shortage at another terminal by voluntary bid, or the workings of the Whiteman formula, are conclusive of a surplus. As noted above, the fact that operations continue to be adequately serviced by a complement reduced by one or two employees may similarly reflect a more efficient reorganization or redistribution of work at the location in question. I am satisfied that the concept of a surplus as it is understood under addendum 31 must be taken to mean that situation where an employee is on a furlough board, if protected, or laid off, if unprotected, regardless of whether either can be forced to protect work at another location. Other circumstances, such as shortage bids, temporary promotions to management without replacement or Whiteman adjustments, do not constitute proof of a surplus for the purposes of Addendum 31.

The Union’s position is therefore sustained, in part. Its submissions with respect to the operation of article 148.11 of the collective agreement are correct, and in that regard the

Company's position fails to recognize the existence of surplus employees contrary to the intention of Addendum 31. The Arbitrator cannot, however, sustain the Union's position with respect to voluntary bids to shortage terminals under articles 40 and 89. Nor can I sustain the Union's view of surplus situations evidenced through the normal operation of the Whiteman scenario under article 44 of the collective agreement. Finally, upon a close examination of the evidence, I am not satisfied that the Union has demonstrated any artificial inflation of the spareboard at Rainy River/Fort Frances. Consequently, I do not deem it appropriate to direct the bulletining of any early retirement opportunities at that location.

The matter is remitted to the parties to further implement the remedial aspects of this award in light of the foregoing. I continue to retain jurisdiction.

December 20, 2005

**MICHEL G. PICHER**
**ARBITRATOR**