CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

SUPPLEMENTARY AWARD TO

CASE NO. 3676

Based on the parties written submissions

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

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

DISPUTE:

The Company's refusal to grant Mr. Desrochers' request for a leave of absence to attend a family educational retreat for the period of June 29, 2008 to July 11, 2008

JOINT STATEMENT OF ISSUE

On May 2, 2008 the Union made a request for an authorized leave of absence for the dates of June 29th thru July 11th under provisions of Article 17.2 of Agreement 5.1. In addition they asked that Mr. Desrochers be allowed to use this time as vacation so that he could receive pay for the time he is at the retreat. The request was denied by the Company on May 15, 2008 and the Union filed a grievance alleging that the Company could not deny the leave under provisions of 17.2 of the Collective Agreement. The Company denied the Union's allegations.

The Union requests an award that Mr. Desrochers is entitled to leave under the provisions of Article 17.2

FOR THE UNION:	**FOR THE COMPANY:**
(SGD.) D. OLSHEWSKI	**(SGD.) R. CAMPBELL**
NATIONAL REPRESENTATIVE	**MANAGER, LABOUR RELATIONS**

There appeared on behalf of the Company:

D. S. Fisher – Director, Labour Relations, Montreal

There appeared on behalf of the Union:

D. Olshewski – National Representative, Winnipeg

SUPPLEMENTARY AWARD OF THE ARBITRATOR

The Union made a request for interim relief in the instant matter. The grievor, Mr. Desrocher, was denied a leave of absence to attend a Family Education Retreat at the Union's Educational Facility for the period June 29 through July 11, 2008. The request for the leave of absence on May 2, 2008, and the Company's denial, communicated on May 15, 2008, was partly motivated by the fact that the grievor's seniority could not secure him vacation for the period in question and, given that the normal complement of employees would be on vacation during that time, there would be an undue disruption of operations occasioned by the grievor's absence.

A conference call in this matter was convened with the parties. During the course of that call it was agreed that the matter could be scheduled expeditiously to be heard at the sittings of the Office in June, 2008. That, in the result, would provide an answer to the grievance in advance of the scheduled Family Education Program. As a condition of the agreed expedited scheduling of the matter, the parties accepted that the Chief Arbitrator would nevertheless render a decision on whether the instant case does demonstrate the requirement of irreparable harm should interim relief be denied. To that end the parties have filed extensive written submissions with the Chief Arbitrator, and this supplementary award is in relation to that issue alone.

Upon a review of the submissions the Arbitrator is compelled to conclude that the instant case does not represent a circumstance of urgency or irreparable harm.

Firstly, it is important to appreciate that the Family Education Program, offered at the Union's Educational and Recreational Complex at Port Elgin, Ontario, is an ongoing program, available in three separate sessions each summer, and offered on a repeating basis from year to year. In the result, if the grievance were to be heard even after the scheduled Family Education Program session, a session to which the grievor would have been denied access, a direction for relief in the form of an order that he be permitted to attend the Family Education session with his family in the following year, would have been entirely available. There is no suggestion before the Arbitrator that attendance at a session in 2008 had any particular aspect of irreplacability as regards the content of the program, the availability of the grievor and his family to attend, or any other factor of which the Arbitrator is made aware.

On what basis, therefore, can it be said that failing to allow the grievor to attend the particular session which he desired in 2008 would be irreparable at arbitration? I can see none. It appears to the Arbitrator to be fundamental that in assessing the question of whether the denial of interim relief would cause irreparable harm, the tribunal must turn its mind to whether there is a substituted or alternative remedy which can be ordered when the matter is heard upon its merits. In the case at hand there appears to be no doubt, as indeed is conceded and argued by the Company itself, that at arbitration, upon hearing the merits of the grievance, this Office could award that the grievor and his family be allowed a leave of absence to attend a subsequent session of the Family Education Program. On these facts there is, very simply, no urgency or risk of irreparable harm which would justify recourse to the

extraordinary discretion of the Arbitrator, under the **Canada Labour Code**, to order interim relief.

Conversely, to grant the interim relief which the grievor seeks would effectively allow the grievance to succeed on its merits, to the potential prejudice of the Company. If the interim relief sought in the instant case were granted, and upon a hearing of the merits of the matter, presumably several months after the grievor's leave of absence, it were found that the Company's position is correct, it would obviously have suffered the dislocation of its operations, the loss the services of an employee during the vacation period in a manner inconsistent with that employee's seniority, and no ability to remedy what had occurred. When these interests are balanced, it is far from clear to the Arbitrator that the urgency of the grievor's situation was such as to merit the extraordinary remedy of an interim order for relief.

While every case must turn on its own facts, it should be borne in mind that there are myriad forms of short-term scheduling issues which arise in the administration of any collective agreement. For example, an employee who believes that he or she has been wrongfully refused a bid on a temporary vacancy which would give the advantage of working daytime hours for a period of several weeks might reasonably feel that grieving the matter and obtaining an arbitral award only months after the fact is of questionable value, and therefore urge his or her bargaining agent to seek interim relief from this Office. In such a circumstance, however, it is far from clear that the urgency or the nature of the issue is such as to justify recourse to the

extraordinary remedy of an interim order. Issues such as job postings, vacations, leaves of absence and other similar matters are in fact often capable of being remedied after the fact by providing a substituted opportunity at a later time.

Quite apart from these general observations however, the facts of the instant case clearly do not demonstrate a condition of irreparable harm so as to justify the granting of an interim order.

July 15, 2008

(signed) MICHEL G. PICHER
CHIEF ARBITRATOR