

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

CASE NO. 4014

Heard in Edmonton, Tuesday, 14 June 2011

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

**TEAMSTERS CANADA RAIL CONFERENCE
MAINTENANCE OF WAY EMPLOYEES DIVISION**

EX PARTE

DISPUTE:

Dispute concerning the inclusion of Goal Share payments in the pension calculations of employees with more than 35 years of service.

UNION'S COMPANY'S STATEMENT OF ISSUE:

In August, 2009, the Union contacted the Company about an issue having to do with goal share earnings and the calculation of the pension entitlement of employees with more than 35 years of Company service. The Company took the position that once an employee completes 35 years of pensionable service his or her goal share earnings will no longer be included in the calculation of his or her pension amount. The Union took the position that goal share earnings must be included in all pension calculations. A grievance was filed.

The Union contends that: **1)** The Company's position is in violation of Appendix A-9 of the collective agreement which provides that "goalshare payments are considered as pensionable earnings." **2)** The term "earnings" in Appendix A-9 cannot be understood without reference to the CP Pension Plan. Therefore, the relevant provisions of the CP Pension Plan must be deemed as incorporated into the collective agreement. **3)** The pension plan draws a distinction between "service" and "earnings". As "earnings", goal share payments must, regardless of the length of service, be included in an employee's pension calculation.

The Union requests that the Arbitrator **(1)** order the Company to immediately begin to include goalshare earnings in the pension calculation of employees with more than 35 years of pensionable service and **(2)** order that all current and former employees who have been financially disadvantaged by the Company's actions be fully compensated for all losses incurred as a result thereof.

The Company denies the Union's contentions and declines the Union's request.

**FOR THE UNION:
(SGD.) WM. BREHL
PRESIDENT**

There appeared on behalf of the Company:

S. Seeney	– Director, Industrial Relations, Calgary
B. Lockerby	– Labour Relations Officer, Calgary
M. Chernenkoff	– Labour Relations Officer, Calgary

There appeared on behalf of the Union:

Wm. Brehl	– President, Ottawa
D. Brown	– Counsel, Ottawa
A. R. Terry	– Vice-President, Revelstoke
S. Brighton	– Local Chairman,

PRELIMINARY AWARD OF THE ARBITRATOR

The instant grievance concerns a Union claim in respect of the calculation of the pensionable earnings of employees with more than thirty-five years of pensionable service, and whether goal share earnings are to be included in that calculation. The Company raises a preliminary objection as to the arbitrability of the grievance.

The Company's representative submits that as a result of a Memorandum of Settlement made on January 14, 2005 the parties agreed that pension provisions do not form part of the collective agreement, and that exclusion would include a provision whereby lump sum goal share payments are said to be pensionable earnings effective January 1, 2004.

The Union submits that the parties' agreement has changed over time. In that regard it points to Appendix A-9 of the collective agreement which appears to be in the form of a letter of understanding which contains the statement: "Goal share payments are considered as pensionable earnings." While the Company submits that that

statement was placed in the appendix purely for informational purposes, the Union's representatives argue that it was negotiated as a collective agreement benefit.

In all of the circumstances the Arbitrator deems it most appropriate to reserve on the Company's objection. I think that the issue of arbitrability and the overall intention of the parties, whether it be under the current collective agreement or under earlier agreements such as the Memorandum of Settlement of January 14, 2005, are best considered in the fullness of evidence and submissions to be made by the parties on the merits of the dispute. For these reasons the Arbitrator reserves on the Company's preliminary objection and directs that the matter be scheduled to be heard on its merits, with the Company's objection to be dealt with in the fullness of the award.

June 20, 2011

(original signed by) MICHEL G. PICHER
ARBITRATOR