

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

**SUPPLEMENTARY AWARD TO
CASE NO. 4030**

Heard in Calgary, Thursday, 10 November 2011

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

MAINTENANCE OF WAY EMPLOYEES DIVISION

There appeared on behalf of the Company:

R. Hampel	– Counsel, Calgary
M. Goldsmith	– Manager, Labour Relations, Calgary
Dr. G. Lambres	– Corporate Physician, Calgary
Dr. J. Cutbill	– Chief Medical Officer, Calgary
Dr. Adams	– Physician, Calgary

There appeared on behalf of the Union:

Wm. Brehl	– President, Ottawa
D. W. Brown	– Legal Counsel, Ottawa
A. R. Terry	– Vice-President, Lethbridge

SUPPLEMENTARY AWARD OF THE ARBITRATOR

By the award herein dated July 21, 2011 the Arbitrator ordered the reinstatement of the grievor. It appears that the parties were unable to agree on his return to work, which occasioned the scheduling of a supplementary hearing. That hearing resulted in mediation discussions with the Arbitrator which caused the parties to agree on the

reinstatement of the grievor on conditions, as reflected in a written agreement signed by both parties dated September 19, 2011. The written agreement of the parties reads as follows:

This letter is in regards discussions between the Union and the Company held at the CROA&DR on Tuesday, September 13, 2011 concerning Douglas Lovett's return to work.

As per these discussions, the parties agree that Mr. Lovett will not be required to meet with an Addiction Professional as a condition of him re-commencing duty. Mr. Lovett will, however, be subject to mandatory unannounced substance testing for a period of 12 months from the signing of this agreement.

This agreement is made without precedent or prejudice and will represent a full and final resolve to this matter.

If you are agreeable to the following, please provide your signature on the space below and return a signed copy to me for our records.

The Company now takes the position that the waiver of the grievor being required to be subject to an addictions assessment is contrary to the Company's internal Occupational Health & Safety policy. On that basis it has declined to return the grievor to work.

With respect, the Company is wrong. Whatever its internal policies may be, representatives with full authority to bind the Company agreed, in writing, on September 19, 2011 that the grievor's reinstatement to employment would not involve the grievor being required to meet with an addictions assessment professional, which would include an addictions assessment physician. For reasons it best appreciates, the Company agreed to that exception, albeit the grievor, like any employee being reinstated, is obviously subject to the normal physical examinations and clearances which would otherwise apply.

The Arbitrator is therefore compelled to sustain the position advanced by the Union. While there can be no doubt but that the agreement which the Company made departs from its normal OHS policy, it is nevertheless bound by the contract which it made. Additionally, I must agree with the Union that it is not insignificant that the Company has the further protection of the grievor being subject to substance testing for a period of twelve months. However, because of the lapse of time which has occurred, the Arbitrator directs that the twelve month period be adjusted to be counted from the date of this award.

I agree that the grievor should be compensated for wages and benefits lost by reason of the delay attributable to the Company's denial of reinstatement and it is so awarded.

I continue to retain jurisdiction.

November 14, 2011

(signed) MICHEL G. PICHER
ARBITRATOR