

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

**2ND SUPPLEMENTARY AWARD TO
CASE NO. 4030**

Heard in Montreal, Thursday, 16 February 2012

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

MAINTENANCE OF WAY EMPLOYEES DIVISION

There appeared on behalf of the Company:

M. Shannon – Counsel, Calgary
M. Moran – Manager, Labour Relations, Calgary
Dr. G. Lambros – Chief Medical Office, Calgary
L. Trueman – Director, OHS, Calgary
P. Wadja – General Manager, Human Resources Planning & Development
G. Wilson – Vice-President, Safety, Environmental and Regulatory, Calgary
M. Chernenkoff – Labour Relations Officer, Calgary

There appeared on behalf of the Union:

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

2ND SUPPLEMENTARY AWARD OF THE ARBITRATOR

By decision herein dated July 21, 2011, the Arbitrator directed that the grievor be reinstated into his employment. That reinstatement was subsequently delayed. The parties again appeared before this Office on September 13, 2011 to resolve an issue of the process by which the grievor would be reinstated. They then made a written

agreement whereby it was understood that the grievor would not be required to meet with an addiction professional as a condition of his return to duty. It appears that that condition was challenged by the Company's Occupational Health and Safety branch. That resulted in a further hearing on November 10, 2011 and a supplementary award herein whereby the Arbitrator directed compensation to the grievor and overruled the Company's objection to proceeding with the grievor's reinstatement. In that award, however, I commented, in part: "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 matter is therefore now returned for further consideration by reason of the Company's handling of the grievor's reinstatement and its ultimate decision to return him to work in a safety sensitive position, albeit with the restriction that he not perform certain safety sensitive duties. The record reflects that in fact Mr. Lovett was compensated by the Company at Group 1 machine operators' rates between August 8 and December 9, 2011 and that he was returned to active duty on December 12, 2011.

The Union now objects to the fact that the grievor has not been restored to safety sensitive duties. By way of remedy it requests that the Arbitrator remove the non-safety sensitive restriction placed upon the grievor and that he be allowed to exercise his seniority without any limitations.

The Arbitrator cannot accede to the Union's request. The grievor's return to work medical review confirmed that the grievor in fact suffers a number of serious conditions which impact the scope of work which he is able to perform. Among the medical conditions identified is hypertension, sleep apnea, chronic obstructive pulmonary disease (COPD), a history of right heart failure, hypercholesterolemia, Type II diabetes and morbid obesity. Of substantial concern is the impact of COPD, which reduces the grievor's ability to oxygenate and which could affect his ability to perform safety sensitive duties.

I am compelled to agree with the Company that the grievor's medical condition confirms the value of conducting a functional ability evaluation, and that pending a more complete appreciation of his medical picture it was appropriate for the Company to return the grievor to work which does not involve safety sensitive duties, albeit he remains paid at the level of a safety sensitive position. In my view the evidence before me does not confirm that the Company was dilatorious in handling the grievor's reinstatement and the medical information which came to its attention. In the circumstances I do not consider it appropriate to conclude that the Company has not complied with the directions of this Office or to order any further remedial relief.

February 20, 2012

MICHEL G. PICHER
ARBITRATOR