

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

CASE NO. 4314 SUPPLEMENTARY

Heard by teleconference call in Ottawa, November 3, 2014

Concerning

CANADIAN PACIFIC RAILWAY

And

**TEAMSTERS CANADA RAIL CONFERENCE
RAIL TRAFFIC CONTROLLERS**

There appeared on behalf of the Company:

Mike Moran - Manager, Labour Relations

There appeared on behalf of the Union:

Shelley Brownlee - General Chairperson

SUPPLEMENTARY AWARD OF THE ARBITRATOR

By an Award herein dated May 20, 2014, the Arbitrator directed the reinstatement of the grievor into his employment "... with compensation for all wages and benefits lost." The parties have been unable to agree as to the quantum of compensation.

The Union's representative claims that the grievor should be compensated for the full amount of \$59,247.09 for wages lost. It bases that figure on the amount of

\$82,251.40 as wages owed, which amount is reduced by earned income of \$13,004.31 as well as an advance of \$10,000.00 paid to the grievor by the Company, resulting in what the Union claims as a total owed of \$59,247.09.

The Company's representative questions the Union's claim, stressing what he characterizes as the grievor's failure to properly mitigate his own losses. The Company notes that while Mr. Tremain was out of service for twelve months, during that time he worked no more than a total of four months, part of which involved an unsuccessful attempt to begin his own drywall business. The Company's representative stresses that the evidence would suggest that the grievor did not make adequate efforts to look for available work for a period of approximately eight months.

The unchallenged representation of the Company's representative is that Calgary, where Mr. Tremain lives, was noted for robust construction activity and that drywall work, which the grievor was qualified to perform, was in high demand during 2013 and 2014, with an average hourly wage for drywallers of \$26.87 per hour. Alternatively, it is suggested that the grievor could have found work as a painter, a labourer or as a qualified warehouse worker. For its part, the Union claims on behalf of the grievor the full wage replacement of \$59,247.09.

The Arbitrator has some difficulty with the Union's position. I accept that there appears to have been something less than a full effort on the part of the grievor to mitigate his losses.

The Company advances several scenarios for its view of the appropriate compensation of the grievor. Of the various scenarios presented by the Company with respect to the earnings potential which Mr. Tremain had, I find the first scenario to be compelling.

The Company submits that the grievor would have earned \$55,889.60 performing drywalling for the period of a year in Calgary. The difference between that amount and what he would have earned as a Rail Traffic Controller salaried at \$82,071.88 per year is \$26,182.88. Given that the Company advanced Mr. Tremain \$10,000.00, it maintains that it would owe him a further \$16,182.88.

The Arbitrator finds the foregoing calculation to be reasonable and realistic. I therefore direct that the Company pay to the grievor, forthwith, the amount of \$16,182.88.

I continue to retain jurisdiction in the event of any further dispute between the parties concerning the interpretation or implementation of this Award.

November 5, 2014

Michel G. Picher
Arbitrator