

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

**SUPPLEMENTARY AWARD TO**

**CASE NO. 4349**

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

Based on the parties' written submissions

There appeared on behalf of the Company:

V. Paquet - Labour Relations Manager, Toronto

There appeared on behalf of the Union:

K. Stuebing - Counsel, Caley Wray, Toronto

**SUPPLEMENTARY AWARD**

This supplementary award addresses a dispute between the parties arising out of a **CROA&DR 4349** issued on February 5, 2015 (the "Award"). The Award reinstated the Grievor, whose file had been administratively closed.

The dispute concerns the amount of compensation, if any, payable to the Grievor. The Company asserts that the Grievor is not entitled to any compensation for a variety of reasons. One is that she was administratively dismissed and her discipline

was not found to be “unjust” as contemplated by Article 82.4(ii) of the 4.16 collective agreement. The Company says this was not a disciplinary termination and so no considerations of back pay should apply. Second, it relies on Addendum 92, item 5 of the Agreement 4.16 of the CRO Rules governing required training which provides that employees will not work until they become qualified.

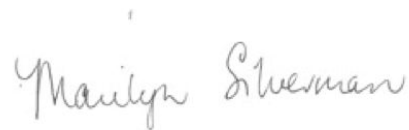
In response to those arguments, the Union says that the dismissal was found to be unjust and as such I should order compensation at a rate of 4300 miles per month for the time from the Grievor’s dismissal (June 18, 2014) until her return to work (March 30, 2015). The Union asserts that, if not for the dismissal, the Grievor would have been able to qualify for service in June of 2014.

In making this determination it is useful to repeat aspects of the factual basis of this Award. The Grievor had been absent from the workplace for a period of approximately five years. Upon her return she received training materials and attended classroom instruction for recertification training in June of 2014. She had two opportunities to write the required exams and did not achieve the required grade to be placed back in service. The Grievor occupied a safety sensitive position. The exams are an integral and critical part of permitting employees to return to and continue to be in service. That point is emphasized by Item 5 referred to above which provides in part:

Employees attending a training course who fail to qualify in accordance with the Regulations for their occupational category will not work until they become so qualified.

I determined in the Award that the Grievor's long service warranted another opportunity for her to try and pass the exams. The Grievor had been out of the workplace for a substantial period of time, was required to retrain and requalify after her return and was unable to do so in the usual manner. There was no dispute that the Grievor could not work until she qualified. Specifically, the Company was not required to keep her in service until she did so qualify. I found that in these circumstances that the Grievor should be given an extra and further chance to re-write and qualify in order to have the opportunity to be returned to service. Her reinstatement to employment was an exercise of my discretion, in light of the particular circumstances of this case and in consideration of the Grievor's service. Her reinstatement was not a conclusion that the Company had acting in an unwarranted or unjust fashion in its administrative termination of the Grievor. Given those conclusions and assessments, this is not an appropriate case for an award of compensation.

December 12, 2016



---

MARILYN SILVERMAN  
ARBITRATOR