CANADIAN RAILWAY OFFICE OF ARBITRATION

SUPPLEMENTARY AWARD TO

CASE NO. 1960

Heard at Montreal, Tuesday, 14 April 1992

concerning

CP EXPRESS & TRANSPORT

and

TRANSPORTATION COMMUNICATIONS UNION

There appeared on behalf of the Company:

M. D. Failes	– Counsel, Toronto
B. F. Weinert	– Director, Labour Relations, Toronto

And on behalf of the Union:

H. Caley	– Counsel, Toronto
J. Crabb	– Executive Vice-President, Toronto
M. Gauthier	– Assistant Vice-President, Montreal

SUPPLEMENTARY AWARD OF THE ARBITRATOR

The parties have brought this matter back to the Arbitrator to resolve, upon their agreement, an issue of interpretation relating to cases arising subsequent to the policy grievance which resulted in the initial award herein dated January 11, 1991. The issue, very simply, is whether, absent the Arbitrator's ruling in favour of the Union based on the limitation of the issues as delineated within the Joint Statement of Issue, the interpretation of the Company would nevertheless be valid in subsequent cases. In other words, for the purposes of relief work, do the wage rates of employees who are under the two special agreements fall to be determined in accordance with the lower wage rates for the position filled as provided within those agreements, or are they entitled to the higher rates of the more senior employees they replace, and whose separate wage scale is contained in the body of the national collective agreement.

The special agreements contain the following provision, expressed at page 71 of the agreement for the Western Canada employees and, in slightly different terms, albeit not material, at page 82 of the Atlantic Canada agreement:

> **3(a)** All other terms and conditions of the current National Collective Agreement, which do not conflict with this Special Agreement will apply to all present and future employees.

The performance of relief work is governed by articles 5.1 and 22.19 of the national collective agreement, which provide, in part, as follows:

> **5.1** Employees required upon proper authority to do relief work in the stationary department will receive the same rate of pay as the position relieved, provided that it is not less than his own. Such employees required upon proper authority to do relief work at a point removed from permanent place of employment, will be reimbursed for reasonable actual travelling expenses and resident expenses, when supported by proper vouchers. This paragraph applies to relief work performed in positions covered by this Agreement.
>
> ...

22.19 Lower paid employees performing relief work in higher paid positions on account of vacations shall be entitled to higher pay of positions filled during such vacation period.

The purpose of a relief work pay provision, such as those provided in articles 5.1 and 22.19, is to ensure that employees receive a fair return for the work performed when they are called upon to temporarily fill a vacancy in a higher rated position. This is in keeping with the cornerstone principle that wages paid should correspond to the value of work performed. As is evident from the overall scheme of the national collective agreement and the two special agreements, the parties to the instant bargaining relationship have agreed to a two tier system of work value. By their agreement, the parties have established lower rates of pay for all positions in the bargaining unit for employees whose seniority does not predate January 1, 1983. The reasons for that agreement are best appreciated by the parties, and no doubt are part of a complex of mutual concessions and trade-offs made in fashioning the overall terms of the national collective agreement, as well as the special agreements.

Is there any basis to believe that the parties would have intended that an employee whose seniority places him or her within the wage rates of the special agreements should temporarily leap frog to the higher rates of the more senior employees by the fortuity of temporarily replacing an employee whose seniority predates January 1, 1983, for the purposes of articles 5.1 and 22.19? I think not. Clearly the parties have addressed their minds to the value of that work generally when performed by an employee who is subject to the terms of one of the special agreements. Those agreements contain full and specific schedules which reflect the value of work performed in all positions which may be the subject of relief work under the two articles in question. Plainly, that value cannot be said to change merely by the happenstance of which employee is being replaced. If that were so, obvious inequities would result as junior employees who hold permanent positions under the special agreements would be paid at lesser rates than employees of equal or lesser seniority who happen to be temporarily relieving in a position vacated by an employee whose seniority predates January 1, 1983. There is clearly no purposive or logical reason for any such discrepancy, nor can the Arbitrator find justification for it in the language of the articles themselves, or in the overall scheme of the collective agreement. On the contrary, as Counsel for the Company stresses, articles 5.1 and 22.19 expressly give the relieving employee the higher pay of “the position relieved” and of “the positions filled”, rather than the pay of the employee who is replaced.

For the foregoing reasons the Arbitrator finds and declares that the interpretation of the special agreements, the national collective agreement, and in particular articles 5.1 and 22.19 of the national collective agreement, advanced by the Company are correct. For the purposes of clarity, the foregoing determination is limited to the resolution of all outstanding claims or grievances which post-date the award herein dated January 11, 1991.

April 16, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR