CANADIAN RAILWAY OFFICE OF ARBITRATION

SUPPLEMENTARY AWARD TO

CASE NO. 2403

Heard in Montreal, Wednesday, October 11, 1995

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT & GENERAL WORKERS [CAW-CANADA]

There appeared on behalf of the Company:

O. Lavoie	– System Labour Relations Officer, Montreal
J. D. Pasteris	– Manager, Labour Relations, Montreal
F. Orchard	– Equipment Supervisor, Fairview Diesel Shop, Halifax

And on behalf of the Union:

T. Barron	– Representative, Moncton
J. Beed	– Local Chairman, Halifax

SUPPLEMENTARY AWARD OF THE ARBITRATOR

This matter came on for further hearing as the parties advised the Office that they were unable to agree on a number of remedial issues arising out of the award of October 15, 1993. In that award the Arbitrator found that the Company had provided to some ten machinists work which essentially brought those employees within the bargaining unit of the Brotherhood, as it involved little more than the work of labourers represented by the Brotherhood under the terms of collective agreement 5.1. The award concluded with the following observations and directions:

> What remedy is appropriate in the case at hand? It appears to the Arbitrator that the Company has not in fact abolished four classified labourers' positions at the Fairview Diesel Shop, as it purported to do. It is not clear on the material before me, however, how many "jobs of work" for fully employed classified labourers in fact remain, given the undisputed representations that a certain amount of work was in fact removed from that location to a VIA Rail facility. In the circumstances the Arbitrator need not yet determine whether the work of four full positions remains effectively unabolished. It remains the prerogative of the Company to organize its work force in the most efficient way possible, subject of course to the provisions of the collective agreement. For the purposes of the instant award I deem it sufficient to find and declare that, insofar as the present division of labour is concerned, the Company has not, as a matter of law, abolished the four classified labourers' positions at the Fairview Diesel Shop. The machinists who have been assigned to that work for the preponderance of their working time must be treated as employees falling within the bargaining unit.
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> The violation of the collective agreement may have occasioned economic loss to the four grievors, in respect of which they are entitled to compensation. However, the manner in which the work may be organized in light of this award is something which should, I think, be remitted to the parties for

> discussion and, hopefully, resolution upon agreement, having regard to the amount of work which continues to be available at the location.
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> Based on the facts before me, however, I find and declare that the Brotherhood is entitled to the payment of union dues with interest, for the period of time during which members of the IAM have performed or continue to perform the duties of labourers. The Arbitrator further directs that compensation be paid to the former employees displaced by the abolishment of the positions, to the extent that they may have lost wages and benefits, and that such compensation include the payment of interest on any wages lost. With respect to all issues the Arbitrator retains jurisdiction in the event of any dispute between the parties having regard to the interpretation or implementation of this award.

Having heard the submissions of the parties, the Arbitrator is satisfied that the Company has now made a substantial adjustment in the scheduling and assignment of two labourers at the Fairview Diesel Shop, so that the fueling, hostling and cleaning of cabs which was previously done in substantial part by machinists has been returned to the hands of labourers represented by the Brotherhood. It appears that the work is done on two separate shifts by the two labourers employed at that location. The Arbitrator accepts the representations of the Company that that adjustment has been reduced to something less than 50% the amount of labourer's tasks which are now incidentally performed at the shop by machinists.

The evidence establishes that the Company has an absolute legal requirement to have machinists on duty, both to cover the need to certify maintenance work in the shop, as well as over the surrounding road territory. This necessitates the scheduling of more than one machinist on any given shift and, I am satisfied, justifies the incidental assignment to those individuals of work which would otherwise be performed by labourers represented by the Brotherhood. Given the reduced amount of labourer's work which they perform, it cannot, in my view, be said that they would fall within the purview of **CROA 2006**, so that they perform little more than the duties of a labourer. In the result, I am satisfied that the adjustment which the Company has made in the assignment of the two labourers at the Fairview Diesel Shop is in compliance with the award, to the extent that there would appear to be two "jobs of work" for fully employed classified labourers within the meaning of the award. I cannot, therefore, direct the establishment of any further labourers' positions in this circumstance, as requested by the Union.

With respect to the issue of compensation, the Arbitrator directs that the Company pay, forthwith, to each of Labourers Dan Boutillier and Pat Hamilton a lump sum of $6,000.00. The Arbitrator further directs that the Company pay to the Union dues based on a calculation of service for four employees from March of 1989 through August of 1994, at the applicable dues rates for the periods in question, with interest to the date of this award. The Arbitrator is of the view that it is not appropriate to order the payment of dues based on ten employees, as suggested by the Union, given that the assignment of labourer's work to the machinists at the Fairview Diesel Shop flows substantially from the abolishing of the four positions at Halifax which gave rise to this grievance. Presumably if the four positions had not been abolished, the Union would have remained in receipt of dues for those positions. It would, in my view, create a windfall to the Union to calculate the shortage of dues on the expanded basis of ten employees merely because the ten machinists can be said to have performed labourer's work for some sixty percent of their working time. While a precise calculation is impossible in the circumstances, the payment of dues based on the four positions abolished is the most compelling make whole remedy.

Should the parties be unable to agree on the precise calculation of the dues and interest owing, that matter may be spoken to .

October 13, 1995

(signed) MICHEL G. PICHER
ARBITRATOR