IN THE MATTER OF AN ARBITRATION

BETWEEN:

BC RAIL

(hereinafter referred to as the "Railway")

AND:

CANADIAN UNION OF TRANSPOTATION EMPLOYEES, LOCAL #1

(hereinafter referred to as the "Union")

(Beltpack Arbitration Award – Follow-Up Questions)

Arbitrator: H. Allan Hope, Q.C.

Counsel for the Railway: Michael Keiran and Paul Straszak

Counsel for the Union: Robert Samson and Wayne Benedict

Place of Hearing: Vancouver, B.C.

Date of Hearing: April 10, 2002

Supplementary Award

I – The Dispute

This Award arises out of jurisdiction retained in the Beltpack Arbitration Award published between the parties on March 27, 2000. The Union submitted 10 questions with respect to the application of that Award. During these proceedings the parties reached an agreement that reduced the questions to three. The agreement was recorded in a letter sent by the Railway to the Union on April 11, 2002 and affirmed by the Union in a coincidental e-mail message. It is not necessary to record that agreement. However, the parties also reached an agreement on the questions to be addressed in this Award. That aspect of the agreement reads as follows:

> Questions # 7 and 9 were combined and revised, and have been referred to Arbitrator Hope for his determination. He has been requested to determine what the initial qualification for establishing an MBR is appropriate - the Straszak letter dated February 6, 2002, or the Veniot letter dated January 30, 2002. In addition, the Arbitrator has been requested to make a determination as to what triggers payment to eligible employees during the 5 year term of his/her MBR. Question # 9, as written, in respect to surplus employees, has been referred to Arbitrator Hope for his determination.

In summary, the three questions that emerged from the discussions between the parties are as follows:

1. What is the initial qualification procedure for establishing an MBR?

2. Once qualified for an MBR under the initial procedure, (for the five-year period), what conditions trigger payment?

3. Do layoffs constitute a surplus. What are the rights of the parties with respect to the designation of a surplus?

I turn to the first two questions relating to the qualification procedure for establishing an MBR and the consequential question of the "conditions [that] trigger payment". As indicated in the Railway's April 11, 2002 letter, the qualification question relates to which of two approaches are preferred. The Union's approach is set out in a January 30, 2002 letter referred to by the parties as the "Veniot Letter". It reads as follows:

> On January 24, 2002 Locomotive Engineer Pynn was removed from the 21:00 Prince George yard assignment due to full belt pack implementation on said assignment. As a result of this implementation, <u>the following list of Locomotive Engineers has been directly affected and now qualifies for the "stream" of MBR qualified employees</u>. Crew office records will confirm this list and I trust there will be no complications in administering Allan Hope's award accordingly.
>
> Locomotive Engineers displaced due to 21:00 belt pack implementation:
>
> Brian Pynn, Removed from 21:00 yard.
> Don Holzworth, Displaced by Pynn from 17:00 yard.
> Robert Hinsche, Displaced by Holzworth from 18:30 yard.
> Colin Paterson, Displaced by Hinsche from 14:00 Bridge yard.
> Mike Beswick, Displaced by Paterson from 4th relief yard.

> Tim Pritchard, Displaced by Beswick from the 3rd Relief yard.
> Wayne Benedict, Displaced by Pritchard from the 14:00 yard.
> Steve Anderson, Displaced by Benedict from the 00:01 yard.
> Todd Wallace, Displaced by Anderson from the 23:30 yard.
> Dave Veniot, Displaced by Wallace from the 1st relief assignment.
> Shawn McMann, Displaced by Veniot from the 22:30 Bridge Yard.
> Jeff Swanson, Displaced by McMann from the Kersley Switcher assignment.
>
> Please confirm that this reflects data compiled from the crew office along with the fact that Brad Gignac was also MBR qualified during the first implementation of the 07:00 yard, in order to keep records accurate and updated. (emphasis added)

The Railway's position is set out in a letter dated February 6, 2002 designated by the parties as the "Straszak Letter". It reads in part as follows:

> This refers to your letter of January 30, 2002, in respect of the recent implementation of Beltpack operations on the 2100 Prince George yard assignment and the resulting chain of displacements. <u>I fully agree with the "snapshop" approach you have taken to determine what employees have been displaced through the implementation of any individual Beltpack assignment</u>. I believe that it is only in this manner that the immediate effect upon employees can be measured. <u>I also agree with your list of displacements</u>, although I admit that I am surprised that the abolishment of a single position would result in such an extensive chain of subsequent displacements. I have however taken the exercise one step further in determining who, if anyone was displaced by Jeff Swanson. <u>I do not agree however with your view that any and all locomotive engineers who are displaced as a direct result of the implementation of a single Beltpack operation are somehow automatically entitled to MBR</u>

protection. In my opinion that result not only flies in the face of the purpose of an MBR but is contrary to the plain wording of Item 4.1 of the agreement which was imposed by Arbitrator Hope in his March 27, 2000 award. To the first point, the underlying purpose of maintaining an employee's basic rate, as a result of his/her displacement through a Company initiated action, is to cushion possible monetary adverse effects, for a defined period of time. More simply stated, if an employee cannot maintain his previous rate of pay as a consequence of the Company's actions, he may be provided with income protection through the application of an individual MBR. This principle was reiterated by Arbitrator Hope in his award at page 37 as follows:

> "The goal [of Maintenance of Basic Rates] is to ensure that engineers displaced by beltpack do not thereby lose earnings".

In that same paragraph Arbitrator Hope noted with approval that the concerns related to entitlement to a maintenance of a basic rate was addressed in s. 4 of the Railway's memorandum.

. . . .

Clearly, under the provisions of s. 4.1, none of those employees you have listed qualify for the establishment of an MBR. Although they were in fact "… displaced as a direct result of the implementation of beltpack …" they do not satisfy the first criterion of having their rates of pay reduced as a result of that displacement. Eleven of the twelve employees were working at yard rates of pay both before and after the change, and while the hours of their new yard assignment may be different, their rate of pay was not reduced. The twelfth employee listed actually worked at a higher ate of pay in road service as a result.

> . . . .
> The Company recognizes the removal of an affected employee through a temporary appointment to management ranks was not contemplated at the time the Beltpack issue was arbitrated, and neither party brought this potential issue to the arbitrator's attention. The Company does not wish to abridge other negotiated rights however, and in this instance alone, for reasons of fairness, it is prepared to designate Mr. Swanson as being entitled to an MBR. In the Company's mind, this would have been the result had Mr. Swanson not been appointed temporarily outside of the bargaining unit. This accommodation is made solely in recognition of the unique and temporary circumstances at hand, and this determination is made without precedent and without prejudice. <u>The hurdle which you must overcome in your overall interpretation of MBR entitlement in the present case is twofold. Although you have clearly demonstrated that there was in fact a chain of displacements, you have not satisfied the concomitant requirement to demonstrate a reduction in the claimant's rate of pay as a result</u>. (emphasis added)

Turning to the first question, I find the reasoning implicit in the "Veniot Letter" to be consistent with the Beltpack Award and the protection contemplated in it for engineers affected by the introduction of Beltpack. The Railway's interpretation could require proof of an immediate loss of earnings coincidental with the implementation of a Beltpack assignment. Hence, engineers wishing to claim wage protection would be required to show, not only that they were displaced by the particular implementation, but that as an immediate consequence, their rates of pay were reduced.

The Union interpretation acknowledges that all engineers who are "displaced as a direct result of the implementation of 'Beltpack' would be entitled to MBR protection for a period of five years". That interpretation meets the language of the Award and balances the interests of the parties in the sense that engineers who have qualified for an MBR by virture of having been displaced can file a claim for wage protection only when and if they establish that their "rates of pay are reduced" and that the reduction arose "as a direct result of the [specific] implementation".

I note in passing that the reasoning of the Union with respect to entitlement to an MBR is consistent with the analysis in CP Rail and UTU, (17 North Bay employees), November 10, 1983, unreported (Weatherill). The careful reasoning of Arbitrator Weatherill reflected in that decision supports the view that displacements resulting from the implementation of a particular MBR may be sequential and will create an entitlement in all engineers directly affected by the displacement. In short, the reasoning is at least consistent with the interpretation of the Union.

I conclude that "the initial qualification procedure for establishing an MBR" is a circumstance in which an engineer with a seniority date of October 25, 1999 or before is "displaced as a direct result of the implementation of [a specific] Beltpack". Thereafter, any claim for MBR compensation will require proof of a reduction in the engineer's rates of pay; proof that the reduction is directly related to the implementation of the Beltpack

assignment that established entitlement to his MBR; and that the claim otherwise meets the terms and conditions set out in s. 4.

The issue raised in the third question was addressed in the Beltpack Award in the context of s. 6 and in a letter sent by G.I. Westlake to the Railway's counsel on October 21, 1999. That letter was reproduced in the Beltpack Award commencing on p. 6. On p. 7 the following extract appears:

> Despite the fact that as many as 30 CUTE 1 employees could be dislocated from their current positions, BC Rail does not anticipate that there will be any loss of employment as a direct result of Beltpack.

Mr. Westlake went on to consider various forecasts and concluded in a passage reproduced on pp. 9-10 as follows:

> Obviously the foregoing conclusion is predicated on a number of assumptions and the final result will depend on the actual number of Beltpack assignments, the actual traffic growth and the actual rate of attrition. If for any reason BC Rail was to subsequently find it had a surplus of locomotive engineers as a direct result of Beltpack implementation, then the appropriate severance or early retirement benefits as determined in the Material Change arbitration would be invoked at that time. (emphasis added)

Question 3 must be addressed in the context of the "Westlake Letter" and s. 6. The position of the Union can be gleaned from its submission where it wrote in part as follows:

> The whole issue of material change on behalf of BC Rail was predicated on the belief that there would be no loss of employment. Presently there are 14 Locomotive Engineers on laid off status and this list could grow considerably, some would say by external motives beyond the railway's control. But none the less, there are four engineers' positions eliminated by Beltpack technology that would have existed and thus there is a material change that should be addressed by the company's own admission …

The question raised by the Union relates to when layoffs may be seen as triggering the benefits addressed in the "Westlake Letter" and s. 6. It is clear on a plain reading of s. 6 that all engineers falling within the term "surplus of locomotives engineers" as it appears in s. 6.1 are entitled to claim the benefits of s. 6. In that context, engineers placed on layoff "as a direct result" of the implementation of Beltpack would fall within the definition of "surplus".

To place that term in perspective, it can be said that it relates to engineers rendered surplus by the implementation of a Beltpack assignment. As indicated by the Union, the term would clearly apply to engineers displaced by the implementation of Beltpack who are unable to maintain employment in the sense that they are forced to accept layoff as their only option. That interpretation is consistent with the reasoning in CP Rail and UTU, May 15, 1992, CROA Case No. 2257 (Picher). That does not mean that a layoff needs to be coincidental with a specific implementation of a Beltpack. The requirement is only that the layoff be shown to have arisen "as a direct result of the implementation" of a Beltpack assignment. As for engineers who

become surplus and are placed on layoff, their rights are those outlined in s. 6 and affirmed in the "Westlake Letter".

Hence, the answer to Question 3 is that layoffs constitute a surplus when the engineers affected are placed on layoff as a direct, but not necessarily immediate, result of the implementation of a Beltpack assignment. In those cases, the rights of the engineers are spelled out in s. 6 of the Beltpack Award. I will continue to reserve jurisdiction to assist the parties with the application of this Award or other issues arising from the Beltpack Award.

DATED at the City of Prince George, in the Province of British Columbia, this 25th day of June, 2002.

"H. Allan Hope, Q.C."

H. ALLAN HOPE, Q.C. – Arbitrator