

**ARBITRATION AWARD**

BETWEEN:

UNITED STEELWORKERS, LOCAL 5795  
(hereinafter called the "Union")

AND:

IRON ORE COMPANY OF CANADA  
(hereinafter called the "Employer" or the "Company")

GRIEVANCE: Pension Guarantee

COUNSEL: For the Union

Tom Harris

For the Employer

Darren Stratton

ARBITRATOR: James C. Oakley

The arbitration hearing was held at Labrador City on October 21, 22 and 23, 2008. The parties agreed as follows:

1. The Arbitrator was acceptable.
2. There were no preliminary objections going to jurisdiction to hear the grievance.
3. The grievance procedure was properly followed or any requirements waived.
4. The Arbitrator would remain seized of the matter for ninety (90) days following publication of the Award in the event there is a question of interpretation or compensation arising from the Award.

The following exhibits were entered at the hearing:

- Consent 1 - Collective Agreement between Iron Ore Company of Canada and United Steelworkers, Local 5795, dated March 1, 2007 to February 29, 2012
- Consent 2 - Grievance Form - Grievance No. 6-8205 dated October 24, 2007
- Consent 3 - Letter dated October 17, 2007 from Dave Porter, Vice President Human Resources and Organization Effectiveness for the Company to George Kean, President of the Union
- GK - 1 Iron Ore Company of Canada, Culminating Offer to USWA, Local 5795, May 10, 1996
- GK - 2 Iron Ore Company of Canada Carol Project, USWA 5795 - 1996 Layoff List, November 13, 1996
- GK - 3 Proposed new Collective Agreement, 1999 - 2004
- GK - 4 Memorandum dated September 14, 1999 from M.J. Sefcik to George Kean and others, with attached draft letter re Option 1 pension plan participants switch to Option 2
- GK - 5 2004 Collective Agreement Renewal, Revised Strike Settlement Offer, September 23, 2004
- GK - 6 2007 Memorandum of Agreement between the Company and the Union, April, 2007

- GK - 7 Memorandum dated April 30, 2007 from George Kean to Dave Porter and others re Pension Guarantee
- GK - 8 Memorandum dated April 30, 2007 from George Kean, Union President to members
- GK - 9 Memorandum dated November 18, 1996 from M.J. Sefcik to Joint Pension Committee
- GK - 10 Agenda and minutes of meeting, Joint Pension Committee, April 23, 1997
- GK - 11 Minutes of meeting, Joint Pension Committee, November 13, 1997
- GK - 12 Settlement Agreement dated April 18, 1999, effective March 1, 1999
- GK - 13 Pension Plan Text for employees of Iron Ore Company of Canada, unionized employees text, July, 2000 (amended and restated as of March 1, 1999)
- GK - 14 2007 United Steelworkers Collective Agreement, monetary proposals to Iron Ore Company of Canada
- GB - 1 Email dated May 14, 2007 from Tracey Dumaresque to Gerard Brenton
- GB - 2 Sunlife Financial statement of account for Gerard Brenton
- GB - 3 Copy of cheque dated November 27, 1996 from Gerard Brenton to Iron Ore Company
- AR - 1 Sunlife Financial statement of account for Allan Russell
- AR - 2 Pension plan form signed by Allan Russell dated September 26, 1996
- WT - 1 Pension plan form signed by Wayne Tulk dated September 17, 1996
- WT - 2 Sunlife Financial statement of account for Wayne Tulk
- CH - 1 Memorandum dated June 14, 2002 from Carolyn Hupé, Senior Adviser, Human Resources to the participants of IOC's Union Hybrid Pension Plan
- CH - 2 Pension Plan Text for employees of Iron Ore Company of Canada, February, 2006 (as amended and restated as of March 1, 2004)
- CH - 3 Card for group insurance and pension plan with phone numbers for Mercer, Sunlife and Manulife

- CH - 4 Iron Ore Company of Canada website document “Your Pension Plan”, April 2, 2001
- CH - 5 Iron Ore Company of Canada website document “Welcome Hybrid Union Option 2”) January 1, 2005
- CH - 6 Iron Ore Company of Canada website document “Welcome Hybrid Union Option 2) January, 2008

### **Nature of the Grievance**

The Union grieved on behalf of employees claiming eligibility for the minimum pension guarantee on retirement. The Union submitted that it was informed, following ratification of the Collective Agreement, that employees who did not pay 100% of the Defined Contribution (DC) premiums retroactive to March 1, 1996 were not eligible for the pension guarantee. The Union submitted that employees who joined the plan in 1996 were eligible for the minimum guarantee. The Union also requested that all employees be allowed to pay 100% retroactive contributions, and that the Company match the payments so that all employees could receive the minimum pension guarantee.

### **Collective Agreement**

The relevant Articles of the Collective Agreement are as follows:

#### Article IV Recognition of the Union

- 4.03 The Company and the Union agree that no employee shall in any manner be discriminated against or coerced, restrained or unduly influenced on account of membership or non-membership, activity or lack of activity in any labour organization, or any other discrimination covered in the Newfoundland and Labrador Human Rights Code.

...

#### Article VIII Arbitration

- 8.01 Both parties to this Agreement agree that the provisions specified in this Agreement are the sole source of any rights the Union might assert in arbitration and only those management rights that are abridged by specific provision of this Agreement are arbitrable. Any dispute or grievance concerning the interpretation or alleged violation of this Agreement, which has been properly carried through all the steps of the grievance procedure

outlined in Article VII or Article X and which has not been settled, will be referred to an arbitrator at the request of either of the parties hereto.

...

8.05 The arbitrator shall have jurisdiction and authority only to interpret and apply the provisions of this Agreement so far as shall be necessary to the determination of the grievance and shall not have any power to alter or change in any way the provisions of this Agreement or to substitute any new provisions for any existing provisions, nor to give any decision inconsistent with the terms and provisions of this Agreement; nor shall any past practices or customs become binding unless they are in writing between the Company and the Union. Where the arbitrator determines that an employee has been disciplined for just cause, he/she may review and modify the penalty imposed.

...

Article 22 Authority of the Union

22.01 The United Steelworkers (Local 5795) and its duly appointed or elected representatives agree that they have authority from the members of the said Union to enter into this Agreement and agree that this Agreement shall be binding upon the same Union and/or its members under the Laws of the Province of Newfoundland and Labrador.

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Appendix "F-2"  
Retirement Plan

For the Unionized Employees of  
Iron Ore Company of Canada

Quebec North Shore & Labrador Railway  
and Associated and Subsidiary Companies

March 1, 2007

**Evidence**

The witnesses called by the Union were George Kean, President, Local 5795, Barry Edwards, Millwright, Gerard Brenton, Occupational Health and Safety Officer, Allan Russell, Millwright, Wayne Tulk, retired Welder and Ron Thomas, Vice President, Local 5795. The witnesses called by the Employer were Carolyn Hupé, Senior Adviser Human Resources, Dave Porter, Vice President Administration and Lina Tremblay, retired Human Resources Adviser.

The parties referred to a Memorandum of Agreement dated April 22, 2007 that settled the terms of the current Collective Agreement, effective from March 1, 2007 to February 29, 2012. The Memorandum of Agreement included pension improvements to be effective March 1, 2007, in particular, an increase in the monthly amount of the minimum pension guarantee. The Memorandum of Agreement stated, in part, as follows:

Pension Improvements (effective March 1<sup>st</sup>, 2007)

Defined Benefits portion

...

3. Minimum Pension Guarantees @ 30 years - DB/DC Members

Minimum pension guarantee will increase as follows for members who qualify (membership since introduction of DC component)

Minimum investment requirement (50% GIC) is withdrawn

	March 1, 2007 to Feb 1, 2008	March 1, 2008 to Feb 1, 2009	March 1, 2009 to Feb 1, 2010	March 1, 2010 to Feb 1, 2011	March 1, 2011 to Feb 1, 2012
Minimum guarantee	\$2,600/month	\$2,700/month	\$2,800/month	\$2,900/month	\$3,000/month

George Kean, President of Local 5795, was one of the persons who signed the 2007 Memorandum of Agreement on behalf of the Union. He testified that after the Memorandum of Agreement was ratified by the members, he received calls from some members who were not certain if they had made pension contributions retroactive to March 1, 1996, and were concerned about their eligibility for the minimum pension guarantee. Mr. Kean said that Union members would not have ratified the Memorandum of Agreement if they had known that the minimum pension guarantee applied only to employees who paid contributions retroactive to March 1, 1996. As a result of these inquiries, Mr. Kean sent an email dated April 30, 2007 to Dave Porter, Vice President Administration for the Company, asking that Union members be permitted to pay contributions retroactive to March 1, 1996 and receive the minimum pension guarantee. Mr. Kean informed members of the Union in a newsletter that he had made the request. Dave Porter replied by letter dated October 17, 2007 denying the request, stating that the eligibility requirement had been in place for some time and that the Company's actuaries, Mercer Ltd., had reviewed the cost of the request and determined that it

would increase the Company's total pension liabilities by \$11.8 million. The Union then filed the grievance dated October 24, 2007.

Evidence was presented about the history of collective bargaining on pension plan issues. Witnesses referred to negotiations in 1996, 1999, 2004 and 2007. Dave Porter, currently Vice President Administration, testified that he attended every round of collective bargaining on behalf of the Company since 1993. He testified that prior to the 1996 negotiations, the Company had a Defined Benefit ("DB") pension plan with a significant amount of unfunded liability. Mr. Porter testified that the Company proposed changes to the pension plan in 1996. The Company's goal was to reduce its liability and to engage the employees to become active in planning for their retirement. The Company proposed a Defined Contribution ("DC") plan, because a DC plan had advantages for employees and for the Company. In a Defined Contribution plan, the employee and the Company make contributions into the employee's pension account, the money is invested and accrues income and the accumulated amount is paid out monthly at retirement. The Union did not accept the Company proposal of a DC pension plan for all employees. However, the parties agreed to have an optional DC plan. It was agreed that employees could select the option to continue with the existing DB plan (Option 1) or to select a hybrid Defined Benefit/Defined Contribution plan (Option 2). It was also part of the 1996 settlement that new employees would be automatically enrolled in the hybrid DB/DC pension plan effective from date of hire.

George Kean testified that in the 1996 negotiations, the proposed change to the pension plan was a significant issue. It was one of the issues that led to a strike by members of the bargaining unit. Mr. Kean testified that the negotiated settlement allowed employees the option to switch to the hybrid DB/DC plan. Employees who selected the DB/DC plan (Option 2) were required to join the plan and made contributions starting on October 1, 1996. Employees were also given the option to make contributions retroactive to March 1, 1996 at a level of 100%, 75%, 50%, 25% or 0%. Mr. Kean testified that in 1996 there were over 100 Union members on layoff status. Some of these members did not have funds available to make contributions retroactive to March 1, 1996 at the 100% level. Dave Porter testified that employees were not required to make retroactive contributions for the period March 1 to October 1, 1996, for the reason that the Company wanted to encourage as many employees as possible to join the hybrid DB/DC plan. Employees could make retroactive contributions at the level they could afford. Under the DB/DC pension plan, employees made a contribution of \$2,000 per year and the Company made a contribution in an amount that started at \$1,000 per year and increased to \$2,500 per year depending on years of service.

Employees had a window of opportunity to enroll in the hybrid DB/DC plan before a specific date in 1996. Mr. Porter testified that having a specific date was necessary in order to encourage employees to select the Option 2 hybrid plan. It was decided by the parties in December, 1997 to open a second window of opportunity. At that time employees were given the same option to enroll in the hybrid DB/DC plan. They were required to make contributions retroactive to October 1, 1996, and at their option they could make additional contributions retroactive, in part or in full, to March 1, 1996 at the 100%, 75%, 50%, 25% or 0% level. The Company agreed to pay matching contributions for those employees electing to join the DB/DC plan in 1997. The opening of the second window of opportunity in 1997 was discussed by the Joint Pension Committee, co-chaired at that time by George Kean for the Union and by Dave Porter for the Company. The minimum pension guarantee was not part of the pension plan in 1996 or 1997. Employees who switched to the hybrid Defined Benefit/Defined Contribution plan in 1996 or 1997 had no knowledge at that time of any future requirements of eligibility for the minimum pension guarantee.

The parties negotiated a 5 year Collective Agreement for the period 1999 to 2004 by Settlement Agreement dated April 18, 1999 (the "1999 Settlement Agreement"). The 1999 Settlement Agreement provided for an early retirement incentive equal to 4 years service. It was agreed to open another window of opportunity for employees to switch from the Defined Benefit plan (Option 1) to the Defined Benefit/Defined Contribution plan (Option 2). The 1999 Settlement Agreement also provided a pension guarantee stating that employees who switched to the DB/DC plan would not receive any lesser pension than if they had stayed in the DB plan. The pension guarantee was stated to be conditional upon participation in the DB/DC plan from March 1, 1996. The 1999 Settlement Agreement stated as follows:

New Option 2 guarantees that retirement benefits will not be less than they would have been if the member had elected Option 1 in 1996, conditional upon Option 2 participation from March 1, 1996 at the 100% contributory level applied as follows:

During the Collective Agreement      A minimum set at the equivalent Option 1 defined benefit level on the date of the member's retirement

After the end of the Collective  
Collective

A minimum set at the equivalent Option 1 defined benefit level on the last day of the Collective Agreement, subject to the member's investment having been at least 50% in interest accounts (GIC's) for the twenty four months immediately preceding retirement

An information package on the 1999 Settlement Agreement was presented to Union members for approval at a meeting on April 23, 1999. The package included calculations of estimated monthly pension amounts under the proposed pension plan improvements for both Option 1 and Option 2. On the page showing the calculation for Option 2, the following statement appears:

Members in Option 2 are guaranteed that beyond the term of the collective agreement, their total monthly pension benefit will not be less than the value of their equivalent Option 1 amount, including the early retirement incentive. This is subject to them having been in Option 2 since March 1996 and holding at least 50% of their defined contribution investment in GIC's for the two years immediately preceding the date of their retirement.

Dave Porter testified that during the 1999 negotiations, the focus of the Company was on downsizing the workforce. To encourage more employees to retire, the Company offered a 4 year service incentive. The minimum pension guarantee would allow members participating in Option 2 since March 1, 1996 to retire without a loss in monthly pension. Employees who had paid contributions retroactive to March 1, 1996 had made more payments to build up the DC portion of their pension. It was also a condition of the 1999 Settlement Agreement that to receive the pension guarantee, 50% of the Company contributions must be invested in GIC's for 2 years prior to retirement. This condition was added to reduce the Company's exposure to the risk of investments in the stock market or other higher risk investments.

After the signing of the 1999 Collective Agreement, there was a third window of opportunity for employees to switch to the DB/DC plan. The Joint Pension Committee approved the content of a letter to be sent to employees who selected Option 1 in 1996, for the purpose of encouraging those members to switch to Option 2. Members could switch to Option 2 effective from March 1, 1999,

or they could make retroactive contributions to March 1, 1996. The letter was sent to employees from Michael J. Sefsik Manager of Human Resources, and stated, in part, as follows:

The possibility of participating in a defined contribution pension plan was introduced during the 1996 negotiations. As you may recall, in 1996 you were given the choice between Option 1 and Option 2. At that time you had selected to remain in Option 1. A second opportunity was offered in 1997 and a number of members switched.

Option 2 is comprised of both a defined benefit and a defined contribution component. Option 1 has only a defined benefit component. Under the defined contribution component of Option 2, both you and the Company make contributions to an individual retirement account and upon your termination of employment you are entitled to the accumulated value of these contributions.

...

Are there any tax advantages?

Yes. The contributions you make to Option 2 are tax deductible and your money and the company's contributions grow tax-free.

How much must I contribute?

If you decide to transfer to Option 2, you will contribute \$96.15 per pay retroactively from March 1<sup>st</sup>, 1999 (a total of \$2,500 for a full year). In addition, IOC will contribute on your behalf based on your years of service in accordance with the following table:

<u>Years of service with IOC</u>	<u>IOC's contributions on an annual basis</u>	<u>IOC's contributions per pay</u>
From 0 to 10 years	\$1,500	\$57.69
From 10 to 20 years	\$2,500	\$96.15
From 20 years and over	\$3,500	\$134.62

If you decide to transfer to Option 2, you also have the choice of making retroactive contributions for the period of March 1<sup>st</sup>, 1996 to March 1<sup>st</sup>, 1999. You can elect to make 25%, 50%, 75% or 100% of the contributions you would have made had you been in Option 2 from March 1<sup>st</sup>, 1996 to March 1<sup>st</sup>, 1999. IOC would also make retroactive contributions in the same proportion.

...

Should I switch to Option 2?

Based on the current pension plan rules, if you are planning to retire after February 2004, Option 2 should provide you with greater pension benefits. Don't forget that Option 2 includes your DC account over and above your pension calculated based on the defined benefit rates above.

The pension plan is described in a formal document called the Pension Plan Text (the "Pension Plan Text"). The Pension Plan Text is registered with the appropriate Government regulators for pension plans. The Pension Plan Text is a lengthy document, considered by the parties to be too lengthy to include as part of the printed Collective Agreement. In the current Collective Agreement, Appendix "F-2" is a single page that states "Retirement Plan for the Unionized Employees of Iron Ore Company of Canada, Quebec North Shore and Labrador Railway and Associated and Subsidiary Companies, March 1, 2007". The parties agreed that Appendix "F-2" is a reference to the Pension Plan Text. Another reason that the Pension Plan Text is not inserted in the Collective Agreement is that there is usually a delay between the signing and printing of the Collective Agreement and the preparation and filing of the revised Pension Plan Text. This procedure was explained by Carolyn Hupé, who has held the position of Manager of Human Resources for Labrador City and Sept Iles, since November, 2002. Ms. Hupé also represents the Company as the current co-chair of the Joint Pension Committee, having replaced Mr. Sefsik upon his retirement. Ms. Hupé testified that the Pension Plan Text needs to be carefully drafted to correspond to the language in the Collective Agreement and to be consistent with any changes required by law. The Company prepares the Pension Plan Text based on advice from Mercer Ltd., consultants. A copy of the draft Pension Plan Text is sent to the Union. The document is approved and signed by the Company's Vice President and filed with the appropriate regulatory authorities.

The Pension Plan Text dated July, 2000 (as amended and restated as of March 1, 1999), includes the following statement with respect to the pension guarantee:

4.9 Minimum for Participants of Option II

- A) For Active Participants of Option II who retire on or before February 29, 2004 and who satisfy the following two conditions:

- (a) elected in 1996 to participate in Option II effective March 1, 1996; and
- (b) elected to contribute at the 100% level under Option II between March 1, 1996 and October 1, 1996

the sum of the following pension amounts prior to any adjustments in accordance with section VI:

- (c) the basic monthly pension;
- (d) the supplementary monthly pension;
- (e) the additional monthly pension, if applicable, and
- (f) the lifetime monthly pension that can be provided by the portion of the Retirement Savings Account attributable to Employer contributions,

shall not be less than the total amount of basic, supplementary and additional monthly pensions the Active Participant would have been entitled to, prior to any adjustments in accordance with section VI, calculated as if he had participated in the Unionized Employees Text under Option 1.

B) For active Participants of Option II who retire after February 29, 2004 with 30 or more years of Continuous Service and who satisfy the following three conditions:

- (a) elected in 1996 to participate in Option II effective March 1, 1996; and
- (b) elected to contribute at the 100% level under Option II between March 1, 1996 and October 1, 1996; and
- (c) invested at least 50% of the total Employer Contributions made on their behalf to the Retirement Savings Accounts in guaranteed investments certificates for at least 24 months prior to their actual retirement date,

the sum of the amounts under sub-section 4.9 A), (c), (d), (e) and (f), shall not be less than the total amount of monthly pension the Participant would have received, prior to any readjustments in

accordance with Section VI, had he retired on February 29, 2004 as if he had participated under Option 1 at that time and calculated on the basis of his age and Credited Service at the date of his actual retirement.

As noted above, the 1999 Settlement Agreement and the corresponding Pension Plan Text state that to receive the pension guarantee, employees in Option 2 who retire after February 29, 2004, were required to invest at least 50% of the total Company contributions in GIC's for at least 2 years prior to the retirement date. Ms. Hupé testified that in 2002 she sent a letter to employees who would be eligible to retire in 2004 to remind them about this condition. The letter was dated June 14, 2002, and stated, in part, as follows:

To the participants of IOC's Union Hybrid Pension Plan:

In 1999, as part of the last Union negotiation, special Plan provisions were introduced: if you retire under the Hybrid Pension Plan and subject to certain conditions, you are guaranteed that your pension income will not be less than the pension to which you would have been entitled had you retired under the Defined Benefit only Plan. These conditions are as follows:

<u>Retirement on or before February 29, 2004</u>	<u>Retirement after February 29, 2004</u>
You elected in 1996 to participate under the Hybrid Plan	You elected in 1996 to participate under the Hybrid Plan
You contributed at the 100% level for the period of March 1, 1996 to October 1, 1996	You contributed at the 100% level for the period of March 1, 1996 to October 1, 1996
	You invested at least 50% of the total employer contributions made on your behalf in Guaranteed Investment Certificates for at least 24 months prior to your retirement date
	You have at least 30 years of continuous service at your retirement date

Ms. Hupé testified that the Company communicated information about the pension plan to employees by various means, including arranging presentations about investment choices at meetings of employees, providing information about the pension plan on the Company's web site, and providing employees with a plastic wallet sized card with phone numbers to call in the event they had any questions about the pension plan. Ms. Hupé testified that, as of April, 2001, the web site showed the requirements of eligibility for the pension guarantee, as set out in the 1999 Pension Plan Text, including the requirement to have made contributions retroactive to March 1, 1996. Ms. Hupé testified that the web site was updated to show changes made as a result of negotiations in 2004 and 2007. The website continued to state the eligibility requirement to have made contributions retroactive to March 1, 1996.

Dave Porter testified that, during the 2004 negotiations, the Company proposed that the remaining employees in Option 1 (about 80 employees) would switch to Option 2. The Company proposed that employees be given a lump sum payment to compensate them for the amount the Company would have contributed to the Defined Contribution portion of their pension plan if the employee had switched earlier. George Kean testified that the members approved a revised Company offer dated September 23, 2004. Mr. Kean testified that the parties agreed that employees in the Defined Benefit plan were required to switch to the DB/DC plan and were given a cash payment based on years of service. Those employees were not eligible for the minimum pension guarantee. The Company also increased the annual amount of its Defined Contribution payment, and agreed to a minimum monthly guarantee for members who qualify, starting at \$2,400 per month in 2004. The revised Company offer stated as follows:

Minimum Pension Guarantees @ 30 years - DB/DC Members

Minimum pension guarantees will increase as follows for members who qualify (membership since introduction of DC component and 50% investment in GICs for two year prior to retirement)

2004	\$2400/month
2005	\$2450/month
2006	\$2500/month

George Kean testified that the 2004 revised Company offer referred to participation in the DC pension plan since introduction of the DC component. Mr. Kean understood that this requirement referred to the year 1996 and not the specific date of March 1, 1996.

Dave Porter testified that during the 2004 negotiations there was a minimal amount of discussion at the bargaining table. When asked about the pension guarantee by the Union negotiator, Mr. Porter replied that it meant the same as it did in 1999. Following the 2004 negotiations, the Pension Plan Text was revised to incorporate changes agreed in bargaining, and the revisions were finalized in February, 2006. Mr. Porter testified that the delay in completing the revisions was caused by the difficult relationship between the parties at that time. Mr. Porter testified that he signed the Pension Plan Text dated February, 2006 (as amended and restated as of March 1, 2004) and it was filed with the appropriate authorities. The 2004 Pension Plan Text stated the following with respect to the minimum pension guarantee:

#### 21.7 Minimum for Unionized Members of Option II

For Active Unionized Members of Option II who retire with 30 or more years of Continuous Service and who satisfy the following three conditions:

- (a) elected in 1996 to participate in Option II effective March 1, 1996;
- (b) elected to contribute at the 100% level under Option II between March 1, 1996 and October 1, 1996; and
- (c) invested at least 50% of the total Employer contributions made on their behalf to the Retirement Savings Accounts in guaranteed investment certificates for at least 24 months prior to their actual retirement date;

the sum of the following pension amounts prior to any adjustments in accordance with Section 22.

- (d) the monthly pension;
- (e) the monthly bridging benefit;
- (f) the additional monthly pension, if applicable, and

- (g) the lifetime monthly pension that can be provided by the portion of the Retirement Savings Account attributable to Employer contributions,

shall not be less than the following monthly pension amount according to the Unionized Members' retirement:

Option II - Unionized Members

Minimum Monthly Pension Guarantees	Retirement Date	
	from	to
\$2,400.00	March 1 <sup>st</sup> , 2004	February 28, 2005
\$2,450.00	March 1 <sup>st</sup> , 2005	February 28, 2006
\$2,500.00	March 1 <sup>st</sup> , 2006	February 28, 2007

George Kean testified that the 1999 Pension Plan Text was consistent with the package accepted by the members in 1999. He confirmed that paragraph 21.7 of the 2004 Pension Plan Text was consistent with his understanding of the pension guarantee. He testified that he did not recall seeing the 2004 Pension Plan Text prior to the arbitration hearing.

Lina Tremblay, retired Human Resources Adviser, testified that she distributed copies of the 2004 Pension Plan Text to George Kean and the other members of the Joint Pension Committee at a meeting held on November 16 and 17, 2006.

Dave Porter testified that between 2004 and 2007, about 350 employees retired who did not receive the minimum pension guarantee and about 125 employees retired who did receive the minimum pension guarantee.

George Kean testified that, prior to the 2007 negotiations, the Union was not informed that any employee had retired who did not receive the minimum pension guarantee on the grounds that the employee had not made contributions retroactive to March 1, 1996. The Union made several proposals for improvements to the pension plan in the 2007 negotiations. Following the conclusion of negotiations in 2007, the issue of eligibility for the pension guarantee was brought to the attention of the Union Executive by Union members and the grievance was filed.

The Pension Plan Text prepared as a result of the 2007 negotiations was not finalized as of the date of the arbitration hearing. Carolyn Hupé testified that the document is in the final stages of review, and will soon be approved by the Vice President, sent to the Union and filed with the regulatory authorities.

Dave Porter testified that there would be a significant cost to the Company to allow all employees to have access to the minimum pension guarantee and to allow employees to make contributions retroactive to March 1, 1996. The cost to the Company would include the amount of the matching retroactive payments. There would be an impact on the actuarial liability of the pension plan. In response to the grievance, the Company asked its actuarial consultants, Mercer Ltd., to calculate the impact of such a change to the pension plan. The consultants advised that it would increase pension liability by about \$11.8 million. Mr. Porter confirmed that no request was made by the Union during collective bargaining in 2007 to change the eligibility requirement for the pension guarantee. Employees who joined the plan in 1996, 1997 or 1999 had the option to make retroactive payments to March 1, 1996 at that time. Employees who were already in the DB/DC plan did not have any later opportunity to top up their payments retroactive to March 1, 1996. Mr. Porter said that the Company had set a standard in 1996 and had applied it consistently.

Several employees testified with respect to their personal eligibility for the minimum pension guarantee. Barry Edwards testified that he has been a member of the DB/DC pension plan since March 1, 1996. On the form that he submitted to enroll in the plan, he indicated that he would pay 0% retroactive to March 1, 1996, but he also wrote on the form that he would make the retroactive payment before the end of December, 1996. When he inquired recently about whether he made the payment, the Company found a payroll record showing that he made the lump sum payment in 1996, and his wife also found a statement from Sunlife showing that he made the payment. As a result of his inquiries, he was able to establish that he was a member retroactive to March, 1996 and eligible for the minimum pension guarantee.

Gerard Brenton has been employed for 28 years by the Company and is a member of the DB/DC plan since March 1, 1996. Mr. Brenton said that he checked into his eligibility recently when he heard rumours that some members were not eligible for the pension guarantee. He was told that he had not paid contributions retroactive to March 1, 1996. His wife then found a cleared cheque payable to the Company dated November 27, 1996, and the Company was able to confirm receipt of the payment for retroactive contributions. He is eligible for the minimum pension guarantee when he

retires. Mr. Brenton's statement of account from Sunlife shows the date he joined the plan was March 1, 1996.

Allan Russell has been employed by the Company for 31 years and was recently considering whether he would retire. In 1996 he joined the DB/DC pension plan, but he selected 0% for retroactive payments and he did not pay contributions retroactive to March 1, 1996. At that time he had been on strike and he could not afford to make the retroactive payments. Mr. Russell's statement of account from Sunlife shows that the date he joined the plan was March 1, 1996.

Wayne Tulk retired from the Company on February 1, 2008. He joined the DB/DC plan in 1996 and paid 50% of the contributions retroactive to March 1, 1996. When he was considering making retroactive contributions in 1996, he was advised that if he paid 100%, then it could make a difference of \$5 or \$10 per month on his pension. After the 2007 Collective Agreement was signed he was told he was not eligible for the minimum pension guarantee. He receives a monthly pension that is about \$200 less than it would have been if he received the pension guarantee. He has filed an individual grievance about the pension guarantee. Mr. Tulk testified that eligibility for the pension guarantee was not an issue for members prior to the 2007 negotiations.

Ron Thomas is Vice President of Local 5795 . He testified that he prepared the proposals the Union submitted to collective bargaining in 2007. The issue of eligibility for the minimum pension guarantee was not raised by members. He said he would not have signed the new Collective Agreement if he had known about the issue.

Carolyn Hupé testified that the statements of account from Sunlife for every employee who switched to the DB/DC plan in 1996 show that the date the employee joined the plan was March 1, 1996. She testified that for Sunlife's purposes, the plan started on that date, because that was the date the plan contract was opened. For new hires after 1996, the statement of account from Sunlife shows the employee's date of hire as the date the employee joined the plan.

### **Union Submission**

The Union submitted that it was not informed prior to signing the 2007 Collective Agreement that some employees were considered by the Company not to meet the eligibility requirement for the minimum pension guarantee. The most important document relevant to the issue in dispute was the

2007 Memorandum of Agreement. The Memorandum of Agreement accepted by the employees to end the strike in 2007, did not state there was a requirement to pay 100% of the Defined Contribution payments retroactive to March 1, 1996 to be eligible to receive the minimum pension guarantee. That document stated that the minimum pension guarantee applied to persons who were members of the Defined Contribution (“DC”) plan since its introduction. The DC plan was introduced October 1, 1996. Therefore, to be eligible for the minimum pension guarantee members were required to pay contributions effective from that date. At that time there was an opportunity to make retroactive payments, but the purpose of making payments retroactive to March 1, 1996 was to have the benefit of additional matching contributions by the Company. The minimum pension guarantee first came into effect in 1999. When employees decided in 1996 whether or not to make retroactive contributions, they did not know it would affect their future eligibility for a pension guarantee. The plan could not have come into effect on March 1, 1996, because at that time the members were on strike and did not have a Collective Agreement. In 1999 the Collective Agreement gave employees the option to join the DB/DC plan and to make contributions retroactive to March, 1996. Employees could receive the benefit of the minimum pension guarantee. The employees who joined the DB/DC plan in 1996 should receive the same benefit as those who joined in 1999 and made retroactive contributions. In 2004, the members voted to accept the strike settlement offer, which provided for a minimum pension guarantee for employees who had membership in the plan since the introduction of the DC component. The 2004 strike settlement offer did not state there was a requirement to pay contributions retroactive to March 1, 1996. Between 2004 and 2007 there were no concerns raised by members with the Union about eligibility for the minimum pension guarantee. If the Pension Plan Text is part of the Collective Agreement, then the parties still have not received, as of the date of the arbitration hearing, a complete Collective Agreement because the document is not available. In the absence of a complete Collective Agreement, the strike is not settled. The Pension Plan Text should be adjusted to reflect the changes agreed in the 2007 Memorandum of Agreement. The content of the Company’s website is not part of the Collective Agreement. The correspondence between the Union and the Company after the Collective Agreement was settled was not relevant. The Union had negotiated a monetary benefit and its members should receive the benefit. The Union referred to *Iron Ore Company of Canada and United Steelworkers, Local 5795*, July 31, 2001 (Fagan). Employees who joined the plan and made contributions since October 1, 1996 are entitled to the minimum pension guarantee. The Union requested that the grievance be allowed and that a declaration be issued by the Arbitrator.

**Employer Submission**

The Employer submitted that there was no violation of the Collective Agreement. The effective date of the Defined Benefit/Defined Contribution (“DB/DC”) pension plan was March 1, 1996, which corresponded to the effective date of the Collective Agreement. Employees who joined the DB/DC plan were required to make contributions starting on October 1, 1996, and had the option to make contributions retroactive to March 1, 1996. This arrangement allowed employees to join the pension plan who could not afford to make the retroactive contributions. If the effective date was October 1, 1996, as the Union submitted, then payments made retroactive to March 1, 1996 could not be pension contributions. In order for those payments to be considered pension contributions, the plan had to be in effect. In 1999 employees were given an opportunity to join the DB/DC pension plan and make contributions retroactive to March 1, 1996. It was clear from the 1999 Settlement Agreement that a condition of eligibility for the minimum pension guarantee was payment of contributions retroactive to March 1, 1996. The minimum pension guarantee was introduced for the first time in 1999. The changes agreed in bargaining were incorporated into the Pension Plan Text. The current Collective Agreement made reference to the pension plan in Appendix “F-2” and a similar Appendix is found in prior Collective Agreements. The Company’s letter to employees in 2002 reminded employees of the requirement to invest 50% in GICs for 2 years prior to retirement, and also stated the eligibility requirement to make contributions retroactive to March 1, 1996. The Company website contained the same information. The intent of the 2004 strike settlement offer was to retain the same features of the pension plan, as it existed in 1999, except as amended by agreement of the parties. The reference to the minimum pension guarantee in the 2004 strike settlement offer was intended to be a reminder of the existing eligibility requirements of the pension guarantee. Following the 2004 settlement, the Pension Plan Text continued the same eligibility requirements, but changed the amount of the pension guarantee. During the 2007 negotiations, the Union did not make any proposal to change the eligibility requirements for the minimum pension guarantee. It was unnecessary to state in the 2007 Memorandum of Agreement that eligibility was conditional on making retroactive payments to March 1, 1996, because that requirement was already known to the parties. There was no change made to this requirement in the 2007 Memorandum of Agreement. The Union acknowledged the eligibility requirement in its letter to the Employer, following the signing of the Collective Agreement, requesting that members be allowed to make contributions retroactive to March 1, 1996 and be eligible for the minimum pension guarantee. The Union has authority to enter into a Collective Agreement binding on its members under Article 22.01. The Arbitrator does not have jurisdiction to amend the Collective Agreement

under Articles 8.01 and 8.05. The Union has requested a benefit not included in the Collective Agreement. The request cannot be addressed in the grievance procedure, but could only be addressed if submitted by the Union as a proposal in future collective bargaining. The Employer has assisted employees by finding records to show that they made payments retroactive to March 1, 1996. There was no evidence of any violation of the Articles alleged on the grievance form. To permit all employees to make retroactive payments and require the Employer to make matching payments was estimated to cost the Employer \$11.8 million. To extend the benefit of the pension guarantee to all employees without any requirement to make retroactive payments could cost the Employer an estimated \$15 million. The minimum pension guarantee was only available to employees who made contributions retroactive to March 1, 1996. The Employer requested that the grievance be denied.

### **Considerations**

The issues before the Arbitrator are (1) are employees eligible for the minimum pension guarantee if they joined the Defined Benefit/Defined Contribution pension plan effective October 1, 1996, but did not make 100% contributions retroactive to March 1, 1996? and (2) in the event that making pension contributions retroactive to March 1, 1996 is a condition of eligibility for the minimum pension guarantee, are employees now entitled to make pension plan contributions retroactive to March 1, 1996, and to have the Company make matching contributions, in order to meet the condition?

Employees joined the Defined Benefit/Defined Contribution pension plan at different times and under various circumstances. Prior to 1996, the pension plan for all employees was a Defined Benefit plan. The Collective Agreement negotiated in 1996 gave employees the option to select Option 1 and stay in the DB plan or select Option 2 and switch to a combined DB/DC pension plan. When employees signed a form to select the DB/DC pension plan, they agreed to make contributions starting October 1, 1996, and they had the option to make contributions retroactive to March 1, 1996 in amounts of 100%, 75%, 50%, 25% or 0%. The Company made matching retroactive contributions. The option not to pay 100% retroactive contributions was a benefit to those employees who had been laid off and wanted to join the plan, but could not afford to make retroactive contributions. When employees made the decision about paying retroactive contributions in 1996, there was no minimum pension guarantee in effect.

Eligibility for the minimum pension guarantee is important to those employees whose pension would otherwise be less than the guaranteed pension. Several employees testified about the effect on the monthly amount of their pension of the requirement to have made pension contributions retroactive to March 1, 1996. Employees who did not make pension contributions retroactive to March 1, 1996 when they joined the DB/DC plan in 1996, have been told they are not eligible for the pension guarantee. The grievance was filed to address these concerns.

Article 8.05 of the Collective Agreement states that the Arbitrator has jurisdiction to interpret and apply the provisions of the Collective Agreement, and shall not have any power to alter or change the Collective Agreement. It is necessary, in order to address the issues, to determine whether there has been any violation of the relevant articles of the Collective Agreement.

The parties presented documents related to prior negotiations and documents related to the pension plan. The documents are external to the text of the Collective Agreement dated March 1, 2007 to February 29, 2012. The Arbitrator will consider what effect to give to the external documents. The Collective Agreement contains in Appendix "F-2" a page stating "Retirement Plan for the Unionized Employees of Iron Ore Company of Canada, Quebec North Shore and Labrador Railway and associated subsidiary Companies, March 1, 2007". Apart from these words on Appendix "F-2" there is nothing contained in the text of the 2007 to 2012 Collective Agreement about the details of the pension plan or the agreements made between the parties with respect to the pension plan. However, the terms of the pension plan were the subject of collective bargaining in 2007 and the subject of prior rounds of bargaining, and were addressed in various settlement agreements negotiated by the parties. The interpretation of the 2007 settlement agreement will be considered by the Arbitrator.

I have considered the principles applied by arbitrators related to the form and content of collective agreements and the principles of interpretation applied by arbitrators when interpreting collective agreements. The parties have made extensive reference to preceding agreements. In that regard, the Arbitrator refers to Brown & Beatty, *Canadian Labour Arbitration*, 4<sup>th</sup> edition at paragraph 4:2240 as follows:

4:2240            Prior agreements

The history of an agreement, that is, the preceding collective agreements . . . are accepted into evidence so as to determine the intention of the parties with regard to any changes made. Thus, preceding agreements are utilized to assist in determining

the nature of and reason for the change so as to reveal more clearly the parties' intentions. . . .

The parties referred to external documents such as the Settlement Agreements and the Pension Plan Text. When considering the effect of such documents, the Arbitrator refers to Brown & Beatty, *Canadian Labour Arbitration*, 4<sup>th</sup> edition at paragraph 4:1230 as follows:

4:1230            Incorporation by reference

For an ancillary document to be part of the collective agreement, it must be intended by the parties to be part of the collective agreement and either meet the formal requirements of a collective agreement, or be incorporated by reference into it. Although there may be circumstances where such documents do not form part of the collective agreement because of their failure to comply with the necessary formalities, more commonly whether a document is incorporated as part of the agreement will turn on the parties' intention. In approaching this question, arbitrators have suggested that ancillary documents should only be incorporated by reference where that intention is clearly expressed. . . .

The Arbitrator has considered the evidence as to the agreed terms of the pension plan, and whether those terms are incorporated as part of the Collective Agreement. The 2007 Memorandum of Agreement includes provisions under the heading "Pension Improvements (effective March 1, 2007)". One of these provisions refers to changes that apply to the minimum pension guarantee for members of the DB/DC plan who qualify by having membership since introduction of the DC component. The amount of the pension guarantee is \$2,600 per month as of March 1, 2007 and increases each year of the 5 year term of the Collective Agreement. There is also a table of pension estimates in the 2007 Memorandum of Agreement which states that the minimum guarantee applies to employees "participating in the DC portion of the plan since 1996". The 2007 Memorandum of Agreement does not state a specific date from which participation in the plan is required. It is necessary to interpret "introduction of DC component" and "participating in the DC portion of the plan since 1996" to determine the applicable date. As an aid to interpretation, reference may be made to prior agreements made between the parties. Such agreements are part of the context of the history of collective bargaining.

What were the terms of the pension plan agreed in the 2004 round of collective bargaining? The revised Company offer dated September 23, 2004, referred to agreements made between the parties with respect to “Pension Improvements”. It was agreed that the Defined Benefit Plan would be terminated and the remaining Defined Benefit members would switch to the DB/DC plan. Those DB plan members were paid a lump sum, depending on years of service, in lieu of Employer retroactive contributions to the DC portion of the plan. The eligibility requirements stated in the 2004 revised Company offer, were similar to the eligibility requirements stated in the 2007 Memorandum of Agreement.

The parties have established a Joint Pension Committee, co-chaired by a representative of the Company and a representative of the Union. Following the conclusion of collective bargaining, the Company prepares the revised Pension Plan Text setting out the detailed content of the agreed pension plan. The Pension Plan Text is provided to the Union and the Union has the opportunity to review the document to ensure it is consistent with the agreement made by the parties in collective bargaining. The Pension Plan Text prepared following the negotiation of the Collective Agreement in 2004 was entered as an exhibit. This document was provided to the Union Co-Chair of the Pension Committee, according to the testimony of Lina Tremblay, a Company representative. I accept the testimony of Company witnesses that the Company’s usual procedure was to present the Pension Plan Text to Union representatives on the Pension Committee, and this procedure was followed for the 2004 Pension Plan Text. I find that the 2004 Pension Plan Text was provided to the Union representatives in July, 2006, after the document was signed by Dave Porter, Vice President of the Company. The 2004 Pension Plan Text stated, in reference to eligibility for the minimum monthly pension guarantee, that one of the conditions was contribution at the 100% level to the DB/DC plan effective from March 1, 1996.

Prior to 2004, the Pension Plan Text stated that eligibility for the minimum pension guarantee required contribution at the 100% level effective from March 1, 1996. The Memorandum of Agreement negotiated in 1999 introduced the minimum pension guarantee as part of the pension plan. At that time the minimum pension guarantee was described as an amount that would not be less than a member would have received if the member continued in the Defined Benefit plan. In the 1999 Memorandum of Agreement, the guarantee was stated to apply “conditional upon Option 2 participation from March 1, 1996 at a 100% contributory level”.

The 2004 revised Company offer, and the 2007 Memorandum of Agreement, do not include any statement changing the conditions for eligibility to receive the minimum pension guarantee. The 1999 Memorandum of Agreement stated that the effective date for contribution at the 100% level was March 1, 1996. Within the context of the previous agreements made between the parties, both the 2004 revised Company offer and the 2007 Memorandum of Agreement, incorporate the date of March 1, 1996 as the effective date for the introduction of the DC component. Therefore, the reference in the 2007 Memorandum of Agreement to participation in the DC portion of the plan since 1996 is a reference to the date of March 1, 1996.

The effect of the 2007 Memorandum of Agreement is that the parties agreed that the Company will provide a pension plan on the terms agreed between the parties. One of the terms agreed between the parties is that the Company will provide a pension plan containing a minimum pension guarantee in the amounts stated, subject to eligibility requirements. One of those eligibility requirements is that an employee be a member of the plan and have made contributions retroactive to March 1, 1996. There is no evidence the Company has failed to provide the pension plan agreed by the parties in the 2007 Memorandum of Agreement. There is no provision in the 2007 Memorandum of Agreement or in the Collective Agreement, that requires the Company to extend the minimum pension guarantee to all employees who retire, regardless of whether they made contributions to the DC plan retroactive to March 1, 1996. To impose such a requirement on the Company would amount to an alteration of the language of the Collective Agreement. The Arbitrator is not permitted to alter or change the Collective Agreement according to Article 8 of the Collective Agreement. If the effect of Appendix "F-2" and the 2007 Memorandum of Agreement is to incorporate the Pension Plan Text into the Collective Agreement, the eligibility requirement incorporated into the Collective Agreement is the requirement to have made pension contributions retroactive to March 1, 1996. However, for the purpose of this Award, it is unnecessary to decide whether or not the Pension Plan Text is incorporated into the Collective Agreement.

There is no requirement in the Collective Agreement or in the 2007 Memorandum of Agreement that employees who did not join the pension plan and make payments retroactive to March 1, 1996, may now be allowed to make contributions retroactive to that date, and that the Company be required to make matching contributions. The Union has requested that the Company allow employees to make contributions retroactive to March 1, 1996 in order to meet the condition for eligibility. The Company has responded that it is not required to do so and refers to the significant cost of allowing this request. There is no obligation imposed on the Company by the Collective Agreement or any

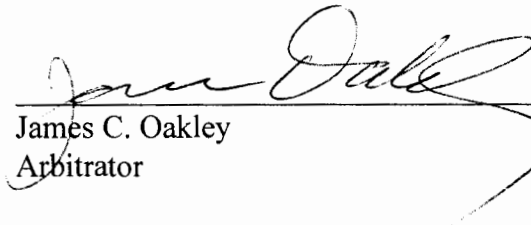
other agreement to make this option available to employees. For the Arbitrator to impose such an obligation on the Company would amount to an alteration or change of the Collective Agreement, which is not permitted by Article 8.

In summary, the Arbitrator has interpreted the 2007 Memorandum of Agreement to determine what was agreed by the parties to be the terms of the pension plan. As an aid to interpretation the Arbitrator has considered prior agreements between the parties, including the 1996 Collective Agreement, the 1999 Memorandum of Agreement, the 2004 revised Company offer, and the 2004 Pension Plan Text. The Arbitrator finds that the parties agreed in 2007 that it is a condition of eligibility for the minimum pension guarantee that an employee pay 100% pension contributions retroactive to March 1, 1996. There is no obligation imposed on the Company by the Collective Agreement or any other agreement that it now allow employees to make pension plan contributions retroactive to March 1, 1996 in order to meet the condition for eligibility. Therefore, the Arbitrator finds that there is no violation by the Company of the Collective Agreement.

**Decision**

For the reasons stated in the Award, the grievance is denied.

**DATED** this 8<sup>th</sup> day of January, 2009.

  
James C. Oakley  
Arbitrator