CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 23

Heard at Montreal, Monday, January 10th, 1966

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

EX PARTE

DISPUTE:

This dispute concerns the manner employed in the Dispatching Office at Moose Jaw, Saskatchewan, to provide relief, one day per week, to relieve the Chief Dispatcher, by a regularly assigned Dispatcher.

There appeared on behalf of the Company:

J. C. Anderson	– Assistant Manager, Labour Relations, Montreal
P. A. Maltby	– Supervisor, Personnel & Labour Relations, Montreal

And on behalf of the Union:

R. B. Copeland	– System General Chairman, Winnipeg
R. A. Perrault	– General Chairman, Montreal
F. E. Easterbrook	– Vice-President, Montreal

AWARD OF THE ARBITRATOR

The issue giving rise to a dispute between the parties is the refusal by the Company to comply with the Union's request to reduce from five to four days the work week of a dispatcher when the services of such employee are utilized on one of his rest days each week to relieve in the position of chief dispatcher, which position is outside the scope of the agreement between the Company and the Union.

For the Company Mr. Anderson raised a preliminary objection as to the arbitrability of this contention. He claimed that while the Union claimed what occurred was in violation of article 7, clause 1 of the collective agreement, the scope of the agreement shown on page 3 thereof clearly sets forth those it governs. A chief dispatcher is not included. Therefore, the terms of the collective agreement do not apply to the position of chief dispatcher, which is an official position involving managerial functions.

Mr. Anderson further urged that the terms of reference of the Canadian Railway Office of Arbitration strengthened his contention, clause 5 thereof reading:

> The jurisdiction of the Arbitrator shall extend and be limited to the arbitration, at the instance in each case of a railway, being a signatory hereto, or of one or more of its employees represented by a bargaining agent, being a signatory hereto, of disputes respecting the meaning of an alleged violation of any one or more of the provisions of a valid and subsisting collective agreement between such railway and bargaining agent, including a claim by an employee that he has been unjustly disciplined or discharged; but such jurisdiction shall be conditioned always upon the submission of the dispute to the Office of Arbitration in strict accordance with the terms of this agreement.

There being no dispute existing within the meaning of the collective agreement, Mr. Anderson concluded, there is no arbitrable dispute that can legitimately be placed before the Canadian Railway Office of Arbitration.

For the claimant Mr. Copeland urged that the question involved a determination as to whether article 7, clause 1 of the collective agreement was being violated as that provision affected the employee's right to a five day work week. Therefore, it was a matter that properly came within the terms of reference of this Arbitrator.

The Arbitrator decided to reserve this question and asked the parties to proceed with a discussion as to the merits.

Dealing first with the question of the arbitrability of the Union's claim, I am convinced there is a question to be determined within the scope of my jurisdiction; namely, whether the facts disclose that the Company insisted upon the employees in question working more than the forty hours provided for in article 7, clause 1, even though the work beyond that period is not covered in the Union's scope of representation. This involves consideration of the actual facts, and, in my opinion, the problem cannot be finalized on the bare premise as to the kind of work performed beyond the forty hours.

Mr. Copeland explained the dispute actually concerned the method employed in providing relief for the chief dispatcher in the train dispatching office at Moose Jaw one day per week, in order that he may enjoy a rest day. The Chief Dispatcher is being relieved on his rest day by a dispatcher. The dispatcher concerned, in addition to providing such relief on his sixth day, is working a full-time, five-day, forty-hour per week assignment. Thus, he claimed, the dispatcher is working a six day week.

While disclaiming any desire to claim jurisdiction over any employee working in an official capacity with the Company, Mr. Copeland claimed the membership of the Union should not be required to violate the terms of the collective agreement in this manner; that when an employee covered by the agreement is required to work one day per week in an official capacity he should not be required to work beyond four additional days in the same week.

Article 7, clause 1 of the collective agreement reads:

> Effective June 1st, 1951, the Company will establish for all Telegraphers included in this agreement, unless otherwise excepted herein, a work week of forty hours consisting of five days of eight hours each, with two consecutive rest days in each seven, subject to the following modifications: The work weeks may be staggered in accordance with the Company's operational requirements. This clause shall not be construed to create a guarantee of any number of hours or days of work not elsewhere provided for in this Agreement.

In answer to a question by the Arbitrator, Mr. Copeland admitted that the employee in question was not actually assigned to this extra day's employment; it was offered to him. He explained there was a fear existing that if he refused to accept, it would jeopardize his opportunity for promotion.

For the Company Mr. Anderson contended that telegraphers are regularly assigned to a forty hour work week, consisting of five days of eight hours each and with two assigned rest days in each seven. No telegrapher assigned to a regular position in accordance with the terms of the collective agreement at Moose Jaw is required to work on an assigned rest day in the official capacity of chief dispatcher.

The answer to this problem was concisely put by Mr. Anderson in stating that when a telegrapher, on his rest days, takes employment that is outside the scope of the collective agreement, whether it be within or without the employment of the Company, such employment does not in any way form part of the work week covered by article 7, clause 1 of the collective agreement.

To succeed in a claim of this sort it would be necessary for the Union to establish that the Company compelled a member of the bargaining unit to work beyond his ordinary work week. In the circumstances related, the employees concerned use their own discretion to work or not to work on their rest days. Some industrial agreements contain a provision specifying overtime as being on a voluntary basis. In other words, the Company concerned has no right to compel an employee to undertake such an assignment. This is a comparable situation.

For these reasons this claim is disallowed.

(signed) J. A. HANRAHAN
ARBITRATOR