CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 60

Heard at Montreal, Tuesday, March 14th, 1967

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

EX PARTE

DISPUTE:

Claim of Conductor W.E. Bufton and crew, Sutherland, Saskatchewan, for 11 miles run from Viscount back to Noranda Mine Spur and return to Viscount, also 35 minutes claimed at Viscount the turnaround point before returning to Noranda Mine Spur, December 13th, 1965.

The employees contend that payment for time only on the spur is not a correct interpretation of article 13 and that claim was properly under article 23, clause (a) (2). They also contend that the Company in declining this claim under article 23, clause (a) (2) and allowing an improper payment under article 13, has violated both rules.

FOR THE EMPLOYEES:

(SGD.) S. MCDONALD
GENERAL CHAIRMAN

There appeared on behalf of the Company:

C. F. Parkinson	– Labour Relations Assistant, Montreal
P. A. Maltby	– Supervisor Personnel & Labour Relations, Winnipeg

And on behalf of the Brotherhood:

S. McDonald	– General Chairman, Calgary

AWARD OF THE ARBITRATOR

As indicated, this was not a Joint Statement of Issue, the Company having maintained that because of untimeliness this matter was not arbitrable.

At the opening of the hearing the representative for the Company made a preliminary objection to the jurisdiction of the Arbitrator to consider the merits because of the failure of the claimant to bring himself within the clear requirements of article 39, clause (e) of the collective agreement.

It reads:

> The decision by the highest officer designated by the Railway to handle claims shall be final and binding unless within 60 days from date of such officer's decision such claim is disposed of on the property or proceedings instituted for final disposition of the claim by the employee or his accredited representative and such officer is so notified. It is understood, however, that the parties may by agreement in any particular case extend the 60 day period herein referred to.

There was no dispute that under date of April 20, 1966, the General Chairman of the Trainmen wrote to the General Manager, Prairie Region, appealing the claim of Conductor W.E. Bufton and crew, Saskatoon Division for payment under the provisions of article 23(a)(2), of the actual main track miles run and time at the turnaround point when the crew was required to perform switching service on an industrial spur on December 13, 1965.

Further, that under date of May 24th, 1966, the General Manager, the highest officer designated by the Railway to handle claims, replied to the General Chairman's appeal in writing of April 20, 1966, declining the claim of Conductor Bufton and crew.

There was no question that subsequent to the General Manager's decision, contained in his letter of May 24, 1966, an exchange of correspondence instituted by the Trainmen, took place in respect of this claim and the matter was discussed at a meeting of the parties. There was, however, no mutual agreement to extend the time limits specified in clause (e) of article 39.

It was the position of the Company that the General Manager's letter of May 24, 1966, clearly specified that this claim had been disallowed and such decision set in operation the 60 day period provided in clause (e) of article 39. It was not until October 17, 1966, 86 days beyond the limit, that the agreement provides, that the Trainmen requested that this claim be progressed to the Canadian Railway Office of Arbitration.

The representative for the Brotherhood maintained that throughout his long experience in dealing with such claims this was the first time, to his knowledge, that clause (e) had been invoked by the Company.

Section (d) of article 39 was relied upon to support the reasoning that each letter from the Company after the date of May 24, 1966, should be construed as a declination as outlined therein, with the result that the 60 day period became operative from the date of each such letter. This provision reads:

> **(d)** Claim made within the prescribed time limits when disallowed may be progressed with the higher officers of the Railway in their proper order on appeal in writing within 60 calendar days from the date of each notification of declination, otherwise such claim becomes invalid. If notification of declination is not given within 60 calendar days of appeal, then the claim will be paid If not so notified, the claim shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contention of the Company as to similar claims.

It was established the upward course of a grievance progresses from what was described as the "ground level", to the assistant superintendent, then to the superintendent and then to the "highest officer designated", namely the General Manager.

Manifestly clause (d) relates to that negotiated pattern and is quite separate and apart from the clear provision in clause (e).

It need not be stressed that past practice cannot be considered unless the provision under consideration contains some ambiguity clouding the actual intent of the parties. In my opinion this does not exist in clause (e). The language is straight forward and permits of no doubt as to its meaning. Only a mutual agreement, which did not exist

in this matter, can lengthen the 60 days period from the time the decision of the highest officer designated by the Railway, in this case the General Manager, has been given.

Canadian Railway Office of Arbitration **Case No. 36** was referred to by the Company representative. It is perhaps useful to repeat this portion of that Award:

> The importance of time limits in the processing of grievances need hardly be stressed. Typical of the manner in which Arbitrators have ruled on the question of the failure to comply with such requirements is the dictum contained in an award in **Michigan Standard Alloys and International Association of Machinists**, reported in 61-3 ARB 8784:
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> > The position of the Company is that of strict and rigid adherence to the time limits the parties have provided in their grievance procedure. This is commendable. It is in the interest of good industrial relations that grievances be processed as readily as conveniently possible. Obviously this was the intention of the parties when they chose to write into their grievance procedure time limits that did not permit undesirable accumulation of unprocessed grievances.
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> > The Arbitrator is well aware and conscious that the provisions relating to the processing of grievances are deserving of the same respect and observance as apply to the agreement generally and that these obligations are imposed on the parties as well as the Arbitrator. The parties herein provided a time limit for the various steps of their grievance procedure not because they wanted to be technical but because they desired that the agreement be effectively administered.

For these reasons I hold I have no jurisdiction to deal with this claim on the merits.

(signed) J. A. HANRAHAN
ARBITRATOR