

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 82

Heard at Montreal, Monday, October 16th, 1967

Concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**EX PARTE**

### **DISPUTE:**

Conduct of investigation and resulting discipline assessed R.A. Courtney for violation of Special Instruction 'C' of Time Table #86 and General Instruction 1 of Form 583.

This resulted from a derailment on August 23rd, 1966, at Mileage 74.9 Bassano Sub. The Brotherhood of Locomotive Engineers contends that during the investigations, violations occurred of article 19 clauses (a), (b), (d) and (e) as well as violation of article 26 clause (d) of the collective agreement.

The Brotherhood contends that the discipline should be removed and Engineer Courtney reimbursed for all pay lost including the difference between road and yard service from August 23rd, 1966. The Company declined on the basis that the investigation was properly conducted.

### **FOR THE EMPLOYEES:**

**(SGD.) A. C. DOULL**  
**GENERAL CHAIRMAN**

There appeared on behalf of the Company:

J. G. Benedetti – Supervisor Personnel & Labour Relations., Vancouver

And on behalf of the Brotherhood:

A. C. Doull – General Chairman, Winnipeg

### **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 Company's representative 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 requirements of clause 7, Paragraph 6, of the Memorandum of Agreement covering the Canadian Railway Office of Arbitration, reading:

No dispute may be referred to the Arbitrator until it has first been processed through the last step of the Grievance Procedure provided for in the applicable collective agreement. Failing final disposition under the said procedure a request for arbitration may be made but only in the manner and within the period provided for that purpose in the applicable collective agreement in effect from time to time or, if no such period is fixed in the applicable collective agreement, within the period of 60 days from the date decision was rendered in the last step of the Grievance Procedure.

There was no dispute that under date of February 10, 1967, the General Manager, Pacific Region, was requested by the Brotherhood to remove the discipline assessed against the record of Engineer R. A. Courtney and to compensate him for all time lost.

Under date of April 4, 1967, the General Manager, said to be the highest officer designated by the Railway to handle grievances, replied to this request in writing of February 10, 1967, stating:

... Your request to have him restored to full road rights and be reimbursed for earnings lost as a road engineer since August 23rd, 1966, is declined.

On May 12, 1967, the Brotherhood wrote to the General Manager stating, in part:

I am developing further information with a view to taking this case before the Canadian Railway Office of Arbitration for consideration.

On June 27, 1967, the General Manager, replied as follows:

Your request for a submission of this dispute to the Canadian Railway Office of Arbitration can not be agreed to. I wrote you on April 4th, in reply to your letter of February 10th, at which time you were informed that the request for Engineer Courtney to be restored to full road rights and to be reimbursed for earnings lost could not be agreed to.

Therefore, in accordance with clause 7 of the Memorandum of Agreement signed June 8th, 1966, establishing the Canadian Railway Office of Arbitration, it was incumbent upon you to advance a request for arbitration within the sixty days from the date of my decision of April 4th, which stipulation was not adhered to by you.

On these facts, it is clear the requirement for a request for Arbitration contained in clause 7, namely, "... within the period of 60 days from the date decision was rendered in the last step of the Grievance Procedure" was not fulfilled. The statement contained in the Brotherhood's letter of May 12, 1967, contained no request for arbitration, merely that an investigation was being continued, "with a view to taking this case before the Canadian Railway Office of Arbitration for consideration." Whether or not it could be requested remained by that statement in doubt.

It should be stressed that even though some doubt exists at the time a definite disallowance of a claim is received as to whether or not it will be necessary to proceed to arbitration, to safeguard the right to do so under the pattern provided in clause 7, it is necessary to make a definite statement of intention to so proceed. If further information is obtained, pointing to the undesirability of so proceeding, the claim of course may be withdrawn.

For the reasons outlined in Arbitration **Cases 36 and 60**, as well as the foregoing, this claim is disallowed.

**(signed) J. A. HANRAHAN**  
**ARBITRATOR**