CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 102

Heard at Montreal, Tuesday, February 13th, 1968

Concerning

PACIFIC GREAT EASTERN RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

EX PARTE

DISPUTE:

Dismissal of Yardman C. S. Mulhall

EMPLOYEES STATEMENT OF ISSUE:

Under date of May 2, 1967 Yardman C. S. Mulhall was notified that he was held out of service pending the outcome of an investigation into a charge of:

> It is alleged that you have failed to give the faithful, intelligent and courteous discharge of duty the service demands by engaging in activity intending to restrict and/or limit the production and service of the Pacific Great Eastern Railway.

Following such investigation, Mr. Mulhall was advised that he was dismissed from the service of the Railway, effective May 19, 1967 because of:

> Conduct unbecoming an employee

It is the contention of the Brotherhood that Mr. Mulhall did not receive a fair and impartial investigation as contemplated by the provisions of the Collective Agreement then in effect.

The Brotherhood further contends that Mr. Mulhall should be returned to service with seniority rights, etc., unimpaired.

FOR THE EMPLOYEES:

(SGD) R. F. LANGFORD
GENERAL CHAIRMAN

There appeared on behalf of the Company:

R. E. Richmond	– Chief Industrial Relations Officer, Vancouver
E. L. McNamee	– Superintendent, Cariboo Division, N. Vancouver

And on behalf of the Brotherhood:

R. F. Langford	– General Chairman, Prince George
M. J. Flynn	– Secretary Gen. Grievance Committee, Vancouver

AWARD OF THE ARBITRATOR

At the opening of this hearing the representative for the Company stated he wished to raise a preliminary objection to a hearing on the merits because of the failure of the Brotherhood to reasonably comply with basic requirements for the processing of a grievance through to arbitration.

There was no dispute that the Brotherhood, in the processing of this grievance complied with the requirement contained in Article 104 of the agreement, reading:

> A request for arbitration must be made within 60 calendar days following the decision rendered by the Vice-President and General Manager, or his representative, by filing notice thereof according to paragraph (i) under "Final Settlement of Disputes".

This notice was given by a letter from the General Chairman to the Regional Manager under date of October 25th.

That notice brought into operation provisions in Article 104 under the heading "Final Settlement of Disputes Without Stoppage of Work" requiring first:

> **(i)** The grievance shall be set out in writing by the party wishing to resort to this procedure, and delivered to the other party. The parties shall confer forthwith, and if agreement is reached then decision shall be final.

The letter of October 25th advising the Brotherhood intended to proceed to arbitration also contained a request to be notified when the Regional Manager would be available for a meeting, as contemplated by clause (i).

In a reply dated October 30th the Regional Manager advised he was prepared to meet "at mutually agreed time" but no proposed time or date was advanced. It was claimed that shortly thereafter the Company's position in a Joint Statement of Issue was mailed to the Brotherhood for consideration.

Subsection (ii) of Article 104 provides:

> Should the grievance remain unsettled for a period of seven calendar days from the date of its written submission by one party to the other, or for such longer time as the parties may agree to, then it shall be referred to the Canadian Railway Office of Arbitration for final settlement without stoppage of work.

For the Company it was claimed that following the letter of October 30 there was no conference; there was no Joint Statement of Issue; there was no agreement to extend the seven-calendar day period; there was no reply to the Regional Manager's letter of October 30th until on December 3, 1967, thirty-nine days after the dispute had been committed to arbitration, the General Chairman revived discussion by way of a letter to the Regional Manager that stated, in part:

> We believe that arbitration of this dispute at this time would not necessarily serve the best interests of either the Railway or its employees. However, the stipulation of time limits in our rules dealing with grievance procedure provides that any extension must be mutually agreed upon.
>
> With these thoughts in mind, we request that we be granted a ninety day extension of the time limit provided for a meeting on this dispute and the preparation of a Joint Statement of Issue.

On December 11th the Regional Manager replied, taking the position that all of the time limits had been exhausted and that the dispute could not be progressed.

An analysis of subsection (ii) shows a time limit that must first be considered. It is that following the submission required in subsection (i) after which the parties are "forthwith" required to confer, seven days are given as the cut-off (unless that period has been extended by mutual agreement from which time must be computed for advancement to the next requirement).

In this case no mutual agreement was reached for an extension of that period. What follows "… then it shall be referred to the Canadian Railway Office of Arbitration for final settlement without stoppage of work" contains no time limit and is therefore directory only. Time in this case for progression to the Canadian Railway Office of Arbitration must be computed from November 1st. It was not until December 14th, following the required 48 hours

notice to the Railway, that the dispute was submitted to the Office of Arbitration. Thus we have a period of 42 days delay in taking the final step required by subsection (ii).

The primary question to be answered here may be reduced to a determination whether that can be considered processing this grievance to arbitration within a reasonable period.

Our first conclusion is that because the Brotherhood is the moving party in the processing of a grievance, it has the burden of going forward.

In previous Awards this Arbitrator has cited the decision in a matter concerning **Michigan Standard Alloys and International Association of Machinists**, 51-3 ARB 8784, in which it was held:

> The position of the Company is that of strict and rigid adherence to the time limits the parties have provided in their grievance procedure. That 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.

This Brotherhood indicated acceptance of this principle when they agreed to this provision in Article 104:

> Any grievance not progressed within the prescribed time limits shall be considered settled on the basis of the last decision and shall not be subject to further appeal.

In general I am convinced a Union's right to have a grievance arbitrated should be conditioned upon it having followed the various steps provided in the mutually agreed upon procedure, not only in accordance with specific time limits prescribed (unless they have been waived) but also in accordance with reasonable time limits where no time limit is specifically prescribed.

In a matter concerning **U.E.W. and Canadian Westinghouse**, 14 LAC 139, professor Bora Laskin (as he was then) held "where procedure is directory only the parties must accept reasonableness as a touchstone of the time limit for arbitration."

As indicated, we are dealing here with that portion of subsection (ii) where no time limit is prescribed for referring the matter to the Office of Arbitration for final settlement. We have reached the conclusion that even when the pattern relating to arbitration in a collective agreement is directory only as in this case, to countenance the Brotherhood waiting 42 days to take the second step in a pattern providing only 7 days for its first step, cannot be said to come within the scope of what could be considered reasonableness as a touchstone. To hold to the contrary would be to bring into disrepute the whole pattern provided that has as its basic purpose that grievances be processed as readily as conveniently possible. The specific time limits provided throughout the applicable provisions of this agreement indicate the parties' common intent to that end.

While I would have preferred dealing with this matter on the merits, the point raised must be answered for future guidance to define what is intended by the applicable provisions.

For these reasons this grievance is dismissed.

(signed) J. A. HANRAHAN
ARBITRATOR