CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 200

Heard at Montreal, Tuesday, January 13th, 1970

Concerning

PACIFIC GREAT EASTERN RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

EX PARTE

DISPUTE:

Disposition of the Surplus in the Operating Employees Benefit Plan.

EMPLOYEES' STATEMENT OF ISSUE:

Effective August 1, 1957, the Unions representing operating employees on the Pacific Great Eastern Railway negotiated certain Health and Welfare benefits with the Railway. It was agreed that the full cost of the benefit plan would be paid by the participating employees. It was further agreed that the Railway would administer the plan for an agreed fee.

Effective April 1, 1957 [sic] the Railway agreed to make certain improvements in the benefits provided and to pay the cost of the benefits as specified in Article 115 of the current collective agreement. It was also agreed that the improved coverage was retroactive to January 1, 1969 and employees received a refund of contributions they had paid in 1969.

The Union submits the surplus remaining in the Operating Employees Benefit Plan as of December 31,1968, are funds which properly belong to the participating employees.

The Railway have declined to provide any current statistics on the financial position of the plan (our letters all remain unanswered) and the Regional Manager has declined to give a decision in this dispute.

FOR THE EMPLOYEES:

(SGD.) R. F. LANGFORD
GENERAL CHAIRMAN

There appeared on behalf of the Company:

R. E. Richmond	– Chief Industrial Relations Officer, Vancouver
B. G. Metz	– Personnel Assistant, Vancouver

And on behalf of the Brotherhood:

R. F. Langford	– General Chairman, Prince George,
F. R. Ruddell	– Vice Chairman, Vancouver

AWARD OF THE ARBITRATOR

The Company has raised the preliminary objection that this matter is not arbitrable. Two grounds are advanced in support of this argument:

(1) that the matter has not been properly processed through the appropriate grievance and arbitration procedures, and

(2) that the subject-matter of the dispute is not within the Arbitrator's Jurisdiction.

As to (1), the issue of procedure, it is the Union's contention that this matter was raised as a grievance by letter to the Chief Industrial Relations Officer dated June 12, 1969. While this letter is said to institute the grievance, it is, in terms, merely a request for information as to the disposition to be made of a certain surplus which, it seems, is held for an employees' benefit plan. There was no answer to this letter, and on September 15, 1969, the Union wrote to the Regional Manager, advising that the matter was "progressed to your level for handling", and submitting that the surplus should be distributed to the appropriate employees While this letter was acknowledged no answer was given, and on November 21, 1969, the Union advised the Regional Manager of its desire to arbitrate the matter and sought to proceed with "the meeting as contemplated at this stage of the grievance procedure". The Company did not join in a Joint Statement of Issue, and on December 1, 1969, the Union sought to proceed under the provisions of Article 8 of the Memorandum of Agreement establishing the Canadian Railway Office of Arbitration.

There can be no doubt that the Arbitrator has jurisdiction to hear only those cases that have been properly processed through the appropriate stages of the applicable grievance procedure, and in accordance with the Memorandum of Agreement establishing the Office of Arbitration. The matter has been dealt with in many previous cases; reference may be made, as an example, to **Case No. 149**.

In the instant case, the grievance must be processed in compliance with Article 104 of the collective agreement in effect between the parties. This article contemplates first the presentation of the grievance in writing to the Superintendent, and second, an appeal from that decision (which was to have been given within thirty days) to the Vice-President and General Manager, or his representative. Following that decision (to be given within thirty days) the Union may by written submission within sixty days, demand a conference (to be held "forthwith"), and if the matter is still unsettled after seven days the matter may be referred to the Canadian Railway Office of Arbitration.

In my view the Union has substantially complied with these procedural requirements. In the case of a "policy" grievance such as this, it would appear to have been quite proper to submit it to the Chief Industrial Relations Officer at the first step. While the grievance was in terms only a request for information, no objection was taken on the ground of its wording, and it seems that the Company was well aware that a claim was being made. In any event, there being no reply, the matter was then referred to the Regional Manager (apparently the "representative", for purposes of the grievance procedure of the Vice-President and General Manager), as a matter within the grievance procedure. No objection was taken at this step on any ground of non-compliance with the grievance procedure, and no answer was given within the time required by the collective agreement. The Union then sought to proceed under paragraph (i) of the provision relating to final settlement of disputes, and when the Company refused to meet, proceeded to arbitration.

On the material before me, it would appear that the Union has substantially complied with the procedural requirements of the grievance procedure, and has sought to have the matter dealt with in the orderly way there set out. The matter was processed through the last step of the grievance procedure, and in my view, could be properly before me under the provisions of the collective agreement and the Memorandum establishing the Canadian Railway Office of Arbitration, providing, of course , that the subject-matter is arbitrable.

As to (2), the issue of substance, it is the Union's contention that it may, in a grievance pursuant to the collective agreement, claim and recover on behalf of employees certain surplus monies held to the credit of a certain employees' benefit plan. The Company has consistently taken the position that this sort of claim does not constitute a "grievance" within the meaning of the collective agreement; that it is not subject to the grievance procedure and is not arbitrable.

A pension plan may of course be the subject of collective bargaining, and it has been between some parties. For some time there has been in existence an Operating Employees Benefit Plan, which has been administered by the Company. At the inception of the plan, it seems, contributions were made by the employees who were its

beneficiaries. The collective agreement currently in effect between the parties makes the following provision regarding the benefit plan.

ARTICLE 115 – EMPLOYEES BENEFIT PLAN

Effective April 1, 1969 the benefits of the Employees Benefit Plan will be amended to provide:

(1) Life Insurance coverage of $3,000.00.

(2) The maximum Weekly indemnity benefit shall be $60.00 per week up to a maximum of 26 weeks for any one period of injury or illness.

(3) Payment of British Columbia Medicare premiums.

The cost of the above benefits will be absorbed by the Railway.

No doubt certain matters relating to this article could be the subject of grievances under the collective agreement. "Grievance" is defined in part as a dispute or difference concerning the interpretation, application operation or alleged violation of the collective agreement. A claim, for example, that the plan had not been amended as required by the agreement, or that the Company had failed to absorb the costs as it is required to do, would clearly be a "grievance" within the meaning of the collective agreement. The claim which has been made in the instant case, however, does not relate to any of the matters dealt with in Article 115. That article simply provides that the Company is to absorb the costs of certain benefits, which are expressly set out. It makes no provision as to the administration of the plan. The collective agreement simply does not deal with the matter of the plan's fund, and there is no provision to which an arbitrator could refer in holding that any surplus in the fund was or was not properly held, or to whom it should be paid out, if at all. This is not a matter which has been the subject of agreement between the parties. Certainly, this collective agreement does not deal with the matter, and I of course have no jurisdiction to add to, subtract from or modify the collective agreement.

If indeed there are surplus monies in the fund of the benefit plan, then it may be that those who have contributed to it and are its beneficiaries are entitled to a distribution of such monies. Whether this is so or not is a matter which could well involve complex accounting procedures, and difficult questions of the law of trusts. Were there an agreement between the parties on this subject set out in the collective agreement, then an arbitrator would be required to deal with such questions. Without such agreement, however, he has no jurisdiction to do so. The Union or the employees concerned must therefore resort to whatever other remedies may be available.

For these reasons, it must be my conclusion that the matter is not arbitrable, since it does not involve the interpretation, application, operation or alleged violation of any provision of the collective agreement. The relief sought is outside my jurisdiction to grant. Accordingly the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR