CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 348

Heard at Montreal, Tuesday, April 11th, 1972

Concerning

PACIFIC GREAT EASTERN RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

Article 19 of the current Collective Agreement under Discipline and the dismissal of engineer P.M. Francis without his having had a fair and impartial hearing and his responsibility established.

BROTHERHOOD'S STATEMENT OF ISSUE:

Mr. Francis performed his duties as an engineer on the Pacific Great Eastern Railway without mishap from May 11th, 1971 to November 1st, 1971 at which time he was dismissed without establishing proper cause for his dismissal.

In compliance with Article 19, Discipline, a hearing for engineer Francis was requested in a letter to Superintendent Estabrooks dated November 25th, 1971, and again to Regional Manager Mr. M.C. Norris dated December 21st, 1971, both requests for a hearing were denied by the Company.

The Brotherhood has requested a hearing to establish the engineer's responsibilities. The Company has denied the request.

FOR THE EMPLOYEES:

(SGD.) K. G. MASON
GENERAL CHAIRMAN

There appeared on behalf of the Company:

R. E. Richmond	– Industrial Relations Manager, Vancouver
H. Collins	– Supervisor, Labour Relations,

And on behalf of the Brotherhood:

K. G. Mason	– General Chairman, Williams Lake
P. M. Francis	– Grievor

AWARD OF THE ARBITRATOR

The grievor entered the service of the Company as a "hired engineer" on May 11, 1971, and was assigned thereafter to various positions as engineman on the system. His employment was terminated on November 1, 1971. No hearing of the sort contemplated by Article 19 of the collective agreement was held.

It is the Union's position that the grievor was improperly discharged, in that Article 19 was not complied with. The material portion of that provision is as follows:

> **Article 19 – Discipline:**
>
> **(a)** An Engineer will not be disciplined or dismissed without his having had a fair and impartial hearing and his responsibility established.

The Company's position is that no hearing was necessary as no matter of discipline was involved. Rather, in the Company's contention, it exercised its discretion in rejecting the grievor before the conclusion of his probationary period. In this, the Company relies on Article 17(g) of the collective agreement, the material portion of which is as follows:

> **17 (g)** A hired Engineer will have no seniority standing for the first six months of service, after which he will rank as Engineer from the date he entered the Company's service as such.

As a "probation" clause, this provision is, perhaps, even less satisfactory than that dealt with in **Case No. 346**. It is, however, susceptible of such an interpretation and, on the basis of the material before me, it is my opinion that that is its true intent. I cannot agree with the Company's contention that the grievor was not an "employee" coming within the bargaining unit during the period of probation. He was an employee, and was subject to, and entitled to the benefit of the provisions of the collective agreement. He had, however – pursuant to those provisions – no seniority at the material times, and the effect of this was, as I find, that he was subject to rejection during the six-month period referred to in Article 17(g) and intended as a probationary period. In construing the portion of Article 17(g) which has been referred to, it is useful to consider other portions of that article. The collective agreement covers enginemen and helpers. The portion of Article 17(g) which is in question relates only to "hired engineers". Helpers, as such, are not subject to such a "probationary period", that is, they rank, on the Helpers' Seniority list, from the date of their first service as helpers, pursuant to Article 17(a). When a helper is promoted to engineer, his seniority as an engineer is from the date of his first service as an engineer. Where, however, a helper fails twice in his examinations to become an engineer he goes to the foot of the seniority list, or his services may be dispensed with "at the option of the Company", pursuant to Article 17(m). It will be seen, then, that while helpers are not subject to the same sort of probationary period as hired engineers, they are nevertheless required to prove themselves as engineers, and if they fail to do so their services may be dispensed with. The requirement of a probationary period for hired engineers is therefore not anomalous, but forms part of a consistent pattern under the agreement. It may also be observed that Article 16(2) of the agreement (which deals with vacation pay) refers to employees who are retired, who leave the service of their own accord, who are dismissed for cause, or "whose services are dispensed with": in this context, the notion of the Company's "dispensing with" the services of an employee could only apply to helpers who have failed to pass a second examination (pursuant to article 17(m), or to hired engineers who have not yet attained seniority.

The Company made its determination as to the grievor's employment on the basis of a standard form of "probationary period review", and it is said that it had been the Company's practice to treat hired engineers as on probation for a six-month period, Article 17 being relied on as authority for this. It is significant that the grievor himself, shortly after the commencement of his employment, was advised by letter dated June 7, 1971, that his employment was probationary for the first six months. There is no suggestion that any objection was taken to this.

It is my conclusion, having regard to the provisions of the collective agreement and to the material before me that the grievor was subject to a six-month period of probation, and that his employment was terminated by the Company, in the exercise of its discretion, within that period. The general remarks made in **Case No. 346** apply equally here. It was not a situation to which the provisions of Article 19 applied, it was not a matter involving discipline or discharge on disciplinary grounds. The Union's right to bring the matter to arbitration pursuant to Article 2.0 of the collective agreement seems to me to be clear (and here the decision in **Case No. 346** and the cases there cited may be referred to), but the disposition of the matter must be according to the provisions of the collective

agreement as they apply in the circumstances. In my view, Article 20 would appear to comply with the requirements of Section 22 of The **Labour Relations Act**, RSBC, 1960, c.205 as amended, although of course that is not a question which I have any jurisdiction to determine. In any event, under my interpretation of the collective agreement, the Company was entitled to dispense with the grievor's services before the completion of his probationary period, and there has been no violation of the agreement.

The grievance must therefore be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR