CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 827

Heard at Montreal, Tuesday, April 14, 1981

Concerning

CANADIAN NATIONAL RAILWAYS

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

After repeated notification of violations of Article 55.1 the Company refuses to recognize this Article and continues to violate Article 55.1, which is an unfair Labour practice.

EMPLOYEES' STATEMENT OF ISSUE:

On October 30, 1980 I notified Mr. R.J. Hansen, Vice-President, Canadian National Railways of 24 violations of Article 55.1. On November 13, 1980 I notified Mr. R.J. Hansen that this was only a few of a much larger list and that 1300 Class Road Switchers did not comply, when built and after years in service are worse. Noise levels are of aggravating levels, plus ill fitting Cabs and uncomfortable Seats.

Notified by Mr. J. Cameron for Mr. R.J. Hansen November 24, 1980 I cannot accept your letter dated November 13, 1980 under the provisions of Article 91(c).

Notified Mr. R.J. Hansen November 28, 1980 that at Canora, Sask. Article 55 and Addenda 31 are being completely ignored and that 87 more documented violations of Article 55 can & will be produced in evidence. (Article 55 still not complied with)

On January 27, 1981 produced in Montreal at Headquarters Building 216 violations of Article 55.1. (not accepted by Management). Now in the General Chairman's Office in Regina, Sask. I have over 500 documented violations of Article 55.1.

To sign a Collective Agreement and not live up to the terms is an unfair Labour practice.

FOR THE EMPLOYEES:

(SGD.) A. J. BALL
GENERAL CHAIRMAN

There appeared on behalf of the Company:

J. A. Fellows	– System Labour Relations Officer, Montreal
P. L. Ross	– Coordinator Transportation - Special Projects, Montreal
A. J. DelTorto	– Consultant, Montreal

And on behalf of the Brotherhood:

A. J. Ball	– General Chairman, Regina
J. P. Riccucci	– Special Representative, Montreal

AWARD OF THE ARBITRATOR

This matter was submitted to the Canadian Railway Office of Arbitration as an "ex parte" proceeding on February 19, 1981. It was listed for hearing in the usual way. Notice was then given that the Company objected to the arbitrability of the matter, and the parties were advised that at the hearing in April, representations would be received with respect to that objection.

Before dealing with the Company's objections, I think it is proper to note that the "dispute", as submitted, does not appear to set out a grievance over which this Office would have jurisdiction. It is alleged, apparently, that repeated violations of the Collective Agreement by the Company amount to an "unfair labour practice". Allegations respecting "unfair labour practices" do not, as such, come within the scope of an Arbitrator's jurisdiction, but should rather be heard and determined by the **Canada Labour Relations Board**. Of course, a violation of any provision of a Collective Agreement could be the subject of a grievance and ultimately the subject of arbitration proceedings. In cases arising under the Collective Agreement between these parties, grievances alleging violation of the Collective Agreement would, if not resolved in the course of the grievance procedure, be arbitrable in the Canadian Railway Office of Arbitration. That is the procedure which the parties have established, in compliance with Section 155 of the **Canada Labour Code**, for the final settlement of differences.

No doubt, Arbitrators should interpret the form of grievances so as to deal with the real, not the ostensible, grievance. The dispute sought to be submitted here, while asserting an "unfair labour practice" (over which I would have no jurisdiction), also at least implicitly asserts that the Company has been in breach of Article 55.1 of the Collective Agreement on a number of occasions. Article 55.1 is as follows:

> **55.1** At points where maintenance forces are available locomotive will be dispatched in a clean condition and will be supplied with fuel, water, sand and drinking water. Cabs to be kept tight and comfortable.

Certainly that provision imposes certain obligations on the Company with respect to the condition of locomotives and their cabs, and such obligations would be enforceable through the grievance and arbitration procedure. There can be no doubt that a grievance or grievances alleging a violation or violations of Article 55.1 may be filed, and it may be that where many such grievances are filed, the parties would agree, as a matter of convenience, to their consolidation, although it should be noted that what is involved in each case is a factual assertion with respect to the condition of a particular locomotive. Where there are a number of such assertions, they may or may not have an element or elements in common which would make the consolidation of the particular grievances desirable.

However that may be, a grievance, to be arbitrable, must have been filed in accordance with the provisions of the Collective Agreement, and must be dealt with in the proper course of the grievance procedure before proceeding to arbitration. In the instant case, although the correspondence filed shows that the Company sought clarification of the Union's complaints, and particulars thereof, there appears to have been no grievance filed in accordance with the terms of the Collective Agreement in that regard. While the matter was raised with the higher officials of the Company, the Company at no time waived compliance with the grievance procedure, but rather was careful to point out that what had been raised were "complaints" and to seek clarification thereof.

The matter now sought to be presented at arbitration simply was not put forward as a grievance and was not processed through the grievance procedure as set out in the Collective Agreement. The grievance and arbitration procedures set out in the Collective Agreement constitute the parties' provision for final settlement of differences and comply, in my view, with the requirements of the **Canada Labour Code**. The Union has not followed that procedure in this case. Neither the Collective Agreement nor the Code give the Arbitrator any power to relieve against the consequences of the Union's failure in this regard. It may be noted that even if the Union's complaints be taken as "grievances", and quite apart from its failure to follow the several steps of the grievance procedure, the matter was not submitted to arbitration within the time limits set out in the Collective Agreement. Again, an arbitrator has no power to relieve against this sort of failure.

As to the proceedings in this Office, while the Union seeks to proceed "ex parte", it has not followed the procedure set out in the Memorandum of Agreement establishing the Canadian Railway Office of Arbitration, in that it did not give the required notice to the other party. The Arbitrator's jurisdiction arises only with respect to matters

brought to this Office in compliance with the procedures established by the agreement of the parties. The Union not having followed those procedures, I have no jurisdiction to hear this case.

For all of the foregoing reasons, these proceedings are terminated.

(signed) J. F. W. WEATHERILL
ARBITRATOR