CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 843

Heard at Montreal, Tuesday, June 9, 1981

Concerning

CANADIAN NATIONAL RAILWAYS

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claims of Mr. F. Meder and T.C. Hayward of Symington re alleged violation of Articles 65.3 - 29.1 and 53.

EMPLOYEES' STATEMENT OF ISSUE:

Locomotive Engineer Mr. F. Meder was tied up at Redditt as directed on July 11th and 18th, 1980 on Trains #148 and 149 that normally operate on a single tour of duty basis from Winnipeg to Farlane on the Redditt Sub. and return to Winnipeg.

Locomotive Engineers Meder and Hayward were assigned to Trains # 148 and 149, Winnipeg to Farlane and were tied up between Terminals at Kenora-Minaki on various dates during July and August, 1980.

The Company refused to acknowledge violation of Articles 65.3 - 29.1 and 53.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) A. J. BALL	(SGD.) R. . HANSEN
GENERAL CHAIRMAN	REGIONAL VICE-PRESIDENT

There appeared on behalf of the Company:

J. A. Fellows	– System Labour Relations Officer, Montreal
D. W. Coughlin	– Labour Relations Assistant, Montreal
A.J. DelTorto	– Consultant, Montreal

And on behalf of the Brotherhood:

A. J. Ball	– General Chairman, Regina

AWARD OF THE ARBITRATOR

The two grievances put forward by the Union involve claims by the grievors pursuant to Article 29 of the Collective Agreement, "Tied Up Between Terminals". In fact, the claims in question have been paid by the Company. The Company now contends that because the claims have been paid, the matter is no longer arbitrable. At the hearing of this matter, the parties' representations were restricted to those relating to the preliminary issue of arbitrability.

The claims originally submitted were for "held time" claimed pursuant to Article 29.1; when these claims were reduced, grievances were filed based on that Article. These grievances were progressed through Steps 1 and 2 of the grievance procedure and were, it appears, denied. They were then progressed to Step 3, pursuant to Article 91.1(c) of the Collective Agreement. At that stage, the Union made reference to Articles 53 and 65.3 of the Collective Agreement, as well as to Article 29.1 on which the grievances had originally been based. Article 53 of the Collective Agreement deals with the rights of representation of the Union and its regularly constituted committee. Article 65 deals with calling, and Article 65.3 deals with notification as to the nature of the service for which an employee is called. While it is quite proper, in support of any particular grievance, to have reference to various provisions of the Collective Agreement which might be thought to have a bearing on the matter, it is something else again to raise separate grievances in the course of the grievance procedure or to replace one grievance by another. In the instant case, whatever reference might be made to various provisions of the Collective Agreement for purposes of argument, it is clear that any grievances alleging violation of Article 53 or Article 65 are of a quite different nature from the grievances claiming payment under Article 29.

At the third stage, the Company allowed the grievances, in that it undertook to pay the claims. It did not, however, admit that there had been any violation of Article 29. The Company did state that it had erred in not rebulletining the positions in question pursuant to Article 33.31. The claims have, it appears, been paid and payment accepted.

The claims in question were for particular amounts and such claims have, it appears, been paid. Acceptance of payment in these circumstances constitutes settlement of the grievances, in my view. No question arises as to the Union's right of representation of employees, which is not in doubt, but which does not constitute a right to arbitrate academic questions of interpretation in the absence of some concrete grievance. Whether or not Article 29, or Article 33 or any other Article of the Collective Agreement applies in circumstances such as those which gave rise to these grievances is a question which may arise whenever such circumstances occur and give rise to claims. Where particular claims have been fully satisfied, there is no longer an arbitrable question.

For the foregoing reasons it is my conclusion that the grievances are not arbitrable. These proceedings are accordingly terminated.

(signed) J. F. W. WEATHERILL
ARBITRATOR