CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 869

Heard at Montreal, Wednesday, October 14, 1981

Concerning

CANADIAN PACIFIC TRANSPORT COMPANY LIMITED

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

EX PARTE

DISPUTE:

Mr. F. Wilder, a CP Transport Calgary based driver, was assessed twenty-five demerit marks and suspended from duty for the falsification of a trip sheet belonging to driver H. Rawdon.

EMPLOYEES' STATEMENT OF ISSUE:

It is an established fact that sleeper teams complete each others trip reports. The Union's contention is that the Company did not show just cause for the suspension and discipline of Mr. F. Wilder, and request that the twenty-five demerit marks assessed be removed from his record and he be reimbursed for any loss of earnings while suspended.

The Company declined the request.

FOR THE EMPLOYEES:

(SGD.) R. WELCH
SYSTEM GENERAL CHAIRMAN.

There appeared on behalf of the Company:

N. W. Fosbery	– Director Labour Relations, Willowdale

And on behalf of the Company:

R. Welch	– System General Chairman, Vancouver
P..L. Rouillard	– Vice General Chairman, Vancouver
M. Krystofiak	– General Secretary-Treasurer, Calgary

AWARD OF THE ARBITRATOR

The Company has raised a preliminary objection to the arbitrability of this matter, saying that it has not been referred to arbitration in a timely manner.

The objection itself was raised on short notice, and an adjournment was granted to allow the union time to prepare written submissions. Such submissions have been made, and the Company has made answer thereto.

It would appear that the matter was properly processed through the grievance procedure set out in the Collective Agreement.

The Company's final decision at Step 3 of the Grievance Procedure was given on April 30, 1981. It was then open to the union to submit the matter to the Canadian Railway Office of Arbitration within 60 days. Such request was made to this office on September 3, 1981, which is beyond the period in which it was open to the Union to make such request. The matter would therefore appear to be untimely, having regard to the provision of Clause 7 of the Memorandum establishing the Canadian Railway Office of Arbitration.

The Union had, by letter dated May 27, 1981, sought the Company's cooperation in preparing a Joint Statement of Issue, which would be filed in this office together with notice of a request for arbitration. It may be noted that Clause 5 of the Memorandum provides that a request for arbitration in a matter such as this "shall contain or shall be accompanied by a Joint Statement of Issue". It would thus appear to be incumbent on a party seeking arbitration to seek first the cooperation of the other party in preparing a Joint Statement.

The filing requirements set out in Clause 5 of the Memorandum do not, however, affect the time limits set out in Clause 7. By Clause 8, where the parties do not agree on a Joint Statement, then permission to submit a separate statement ("*ex parte*") may be sought, on 48 hours' notice to the other party. Here too, the time limits set out in Clause 7 continue to apply. As a matter of procedure, "*ex parte*" applications would appear always to have been granted, although there have been cases where they have been set aside for lack of jurisdiction where the appropriate notice had not been given. The granting of the "*ex parte*" application, that is, permission to file a separate statement rather than a Joint Statement does not correct any failures to comply with the time limits set out in Clause 7.

In the instant case, while the Union properly sought the cooperation of the Company in preparing a Joint Statement, it took no timely action when such cooperation was not forthcoming. It was not under any obligation to await the Company's reply, and it was not prevented, by the Company's inaction, from proceeding to refer the matter to the Office of Arbitration. Such reference must, however, be made in accordance with the Memorandum establishing the Office of Arbitration and, in particular, must be made within the time limits set out in Clause 7, as well as in the manner contemplated by Clause 5 or Clause 8. Here, the matter was not referred to this office within the time specified in Clause 7. The Arbitrator's jurisdiction is, by Clause 4, "conditioned always upon the submission of the dispute to the Office of Arbitration in strict accordance with the terms" of the Memorandum. The Arbitrator has no power, whether under the Collective Agreement, the Memorandum, or the Canada Labour Code, to extend time limits.

For the foregoing reasons it must be my conclusion that the matter is not arbitrable and the grievance must accordingly be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR