

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 871

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:

Claim on behalf of A. Campbell - 458 miles at pro rata rate.

EMPLOYEES' STATEMENT OF ISSUE:

On January 8th, 1981, a leased operator was dispatched from Vancouver to Prince George and return – departure time 16:30 hours.

Mr. Campbell was available and not called for early trip – dispatched Vancouver to Kamloops, a difference of 458 miles.

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 the preliminary objection that the matter is not arbitrable, and at the hearing of this matter the parties' submissions were restricted to that issue.

The Company's reply at Step 2 of the Grievance Procedure was received by the Union on February 23, 1981. By Article 17-B-1 of the Collective Agreement, the Union then had 35 calendar days in which to appeal the matter. The Union's notice of appeal is dated March 25, 1981. While that date is within the time for appeal, the letter containing the notice is postmarked March 31, 1981, (after the time for appeal had expired), and it would appear that the notice was not received by the Company until April 3. As is said in **Case No. 837**, the "appeal" from the rejection of a grievance is made when notice thereof is communicated to the other party. There was no appeal in this case within the time limits set out in the Collective Agreement.

As is said in **Case No. 837** (between the same parties, and involving the same Collective Agreement), the provisions of this agreement with respect to time limits are mandatory and not directory. Under the Memorandum establishing the Canadian Railway Office of Arbitration, the Arbitrator's jurisdiction is conditioned upon the submission of the dispute in strict compliance with its terms, which prohibit the Arbitrator from modifying or disregarding the terms of a Collective Agreement. The Canada Labour Code confers no exceptional powers on an Arbitrator in this regard.

It follows that, the appeal not having been advanced within the time limits set out in the Collective Agreement, the matter is not arbitrable. The preliminary objection is therefore allowed, and these proceedings terminated.

(signed) J. F. W. WEATHERILL
ARBITRATOR