

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1059

Heard at Montreal, Tuesday, April 12th, 1983

Concerning

CANADIAN PACIFIC LIMITED

and

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

EX PARTE

DISPUTE:

The Union contend the positions of Tractor Driver – Linesman (Barge Slip), Vancouver, B.C. do not require a valid driver's license.

EMPLOYEES' STATEMENT OF FACT:

The qualification (valid driver's license) has been added to the duties of the Tractor Driver – Linesman (Barge Slip) position.

The Union contend this is a significant change under article 7.2 of the collective agreement.

The Company declined the claim.

FOR THE BROTHERHOOD:

(SGD.) P. ROUILLARD

FOR: SYSTEM GENERAL CHAIRMAN

There appeared on behalf of the Company:

F. R. Shreenan – Assistant Supervisor, Labour Relations, Vancouver
P. E. Timpson – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

R. Welch – System General Chairman, Vancouver
M. Krystofiak – Vice General Chairman, Calgary

AWARD OF THE ARBITRATOR

In this case, the Company raises the preliminary objection that the grievance is not arbitrable in that it was not processed in accordance with the provisions of the collective agreement.

The grievance was first put forward in March, 1982, being declined on March 16. It was referred to Step 2 on April 12, and denied at that level on April 13. By Step 3 of the grievance procedure set out in article 28 of the collective agreement, a grievance may be processed to Step 3 within 42 calendar days following receipt of the decision at Step 2. In the instant case, the Union sought to refer the matter to Step 3 on July 9, 1982. That was clearly well out of the time within which the matter might be referred to Step 3.

Time limits are mandatory : article 28.3, and while the Union referred to certain circumstances which, it argued, called for "flexibility", it is for the parties jointly to be flexible if they wish. An Arbitrator has no jurisdiction to alter the provisions of the Agreement or to relieve against failure to meet its time limits.

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

(signed) J. F. W. WEATHERILL
ARBITRATOR