

CANADIAN RAILWAY OFFICE OF ARBITRATION
SUPPLEMENTARY AWARD TO
CASE NO. 1218

Heard at Montreal, Tuesday, September 11, 1984

Concerning

CANADIAN PACIFIC LIMITED

AND

RAIL CANADA TRAFFIC CONTROLLERS

EX PARTE

(Decided on the basis of the parties' written submissions)

There appeared on behalf of the Company:

J. T. Sparrow – Manager, Labour Relations, Montreal
J. W. McColgan – Labour Relations Officer, Montreal

And on behalf of the Union:

G. C. Ellison – CP System Vice-Chairman, Vancouver
F. R. Sheahan – National Chairman, Winnipeg

AWARD OF THE ARBITRATOR

The Company has sought clarification of my initial decision in this matter of which the final paragraph summarizes my conclusions:

In the result I have determined pursuant to article 38.06.04 of the collective agreement that the RCTC still remains bound by the provisions of "the rules and procedures" of the CROA with respect to the "arbitrability" of unsettled grievances. In short, I can discern no restriction to my jurisdiction, provided my interpretation is correct, in defining the mutual obligations of the parties with respect to the procedures for the arbitration of their outstanding grievance disputes as contained in the subsisting collective agreement.

In requesting clarification of my award the Company poses the following question:

Does the RCTC have the right to participate in CROA arbitration on an ad hoc fee basis or must they contribute their share of the operating expenses of operating and administering the office of arbitration in accordance with Clause 17 of the Memorandum of Agreement establishing CROA?

Article 17 of the Memorandum of Agreement establishing CROA reads as follows:

The expenses of operating and administering the Office of Arbitration, including the fees and expenses of the Arbitrator and all necessary clerical and technical assistance shall be borne one-half by the Appendix 'A' signatories and one half by the Appendix 'B' signatories. At the commencement of each year the Administrative Committee shall estimate the total expense of maintaining the Office of Arbitration for the ensuing year and, at that time and from time to time

thereafter during the year shall make interim preliminary assessments equally upon Appendix 'A' signatories and the Appendix 'B' signatories sufficient to defray current expenses currently. At the end of each year the total annual expenses actually incurred shall be apportioned as set out and all necessary credits and debits shall be made accordingly.

The simple answer to the question posed by the Company is that so long as article 17 of the Memorandum of Agreement remains a Rule and Procedure of CROA, the RCTC has undertaken by operation of article 38.06.04 of the collective agreement to comply with that prerequisite.

The RCTC by penning its signature to the subsisting collective agreement has obliged itself to adhere to the rules and procedures of CROA in the processing of its members' grievances to arbitration. The fact that it has withdrawn its membership from CROA does not in the least derogate from its continuing obligations that were assumed under article 38.06.04.

Nor is the RCTC's withdrawal from the membership of CROA (which in my view was effected in accordance with the same rules and procedures governing that organization) warrant the Trade Union in unilaterally imposing its own fee structure with respect to the payment of its contributions to costs of an arbitration hearing. In advancing this proposal the Trade Union, in my view, is simply attempting to change, or amend, or otherwise vary the prevailing provisions of the collective agreement governing the established arbitration procedure. Without the employer's consent to this proposal, the RCTC, despite its decision to withdraw its CROA membership, continues to be bound by the Rules and Procedures of CROA as expressed in article 38.06.04 of the collective agreement with respect to the processing of its members' grievances to arbitration.

In response to the RCTC's challenge to my jurisdiction to entertain the Company's request for clarification I am satisfied, to the extent that arbitrability continues to be an issue in dispute, I have the authority and the competence to respond to any issue touching on the disposition of any grievance that has been referred to CROA.

In sum, so long as Section 17 of the Memorandum of Agreement remains a Rule and Procedure governing CROA, the RCTC is bound by the provisions under article 38.06.04 of the collective agreement. Moreover, despite the RCTC's withdrawal of its membership from CROA, it cannot, without the consent of the Company and the Members of the Administrative Committee of CROA, participate in the CROA arbitration procedure on an ad hoc fee per case basis.

(signed) DAVID H. KATES
ARBITRATOR