CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1367

Heard at Montreal, Thursday, May 16, 1985

Concerning

CP EXPRESS AND TRANSPORT

and

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

EX PARTE

DISPUTE:

Concerns claim for unpaid overtime wages for employee G. Whiteside due to his being required by a Company Officer to attend an investigation in connection with reporting for work late and alleged refusing to sign a Questions and Answers Statement of May 9, 1984, which was conducted immediately following completion of his regular assigned hours 00.01 midnight to 08.30 a.m., June 8, 1984, for forty-five (45) minutes at the overtime rate.

BROTHERHOOD'S STATEMENT OF ISSUE:

The Company's position is that employees required to report for an investigation outside their regular hours of such assignment are not paid and the Company declines the Union's contention.

The Union's position is that employee G. Whiteside was directed by a Company Officer to report for an investigation outside and beyond the hours immediately following his regular eight hour assignment on date of June 8, 1984, and is entitled to forty-five (45) minutes at the applicable overtime rate which is the actual time he reported for an investigation and remained under the direction and control of a Company Officer which should attract the overtime premium as outlined in Articles 13.1, 13.4 and 13.9 of the Collective Working Agreement.

That G. Whiteside was under the control and direction of a Company Officer and that all such time should be considered as being at work and that he be paid for forty-five (45) minutes at the overtime rate for June 8, 1984.

FOR THE BROTHERHOOD:

(SGD.) J. J. BOYCE
GENERAL CHAIRMAN, SYSTEM BOARD OF ADJUSTMENT, #517

There appeared on behalf of the Company:
N. W. Fosbery – Director, Labour Relations, Toronto

And on behalf of the Brotherhood:
J. J. Boyce – General Chairman, Don Mills
G. Moore – Vice-General Chairman, Moose Jaw

AWARD OF THE ARBITRATOR

I have decided to consolidate both **CROA Cases #1365** and **#1367** in the one decision because they may be disposed of for the same reasons.

In both cases the company rendered its decision in October 1984 declining the grievances at the final level of the grievance procedure (Step III). The trade union did not refer those grievances to CROA until February 27, 1985. The company therefore challenged the arbitrability of the grievances for their being in excess of the sixty (60) day time limit provided under Clause 7 of the CROA Memorandum of Agreement. Clause 7 reads as follows:

> **7.** Failing final disposition under said procedure a request for Arbitration may be made but only in the manner and within the period provided for that purpose in the applicable collective agreement in effect from time to time or, if no such period is fixed in the applicable collective agreement in respect to disputes of the nature set forth in Section (A) of Clause 4, within the period of 60 days from the date the decision was rendered in the last step of the Grievance Procedure.

There is no question that the trade union failed to comply with that sixty day time limit. Moreover, even assuming that the trade union advised the company of its intention to refer its grievances to CROA within the sixty day period (as required by Step IV of the grievance procedure) this would not obviate the necessity of referring the grievance to CROA in accordance with the requisite time limit. **CROA Case #848** is a precedent "on all fours" with the two situations described herein:

> Under the memorandum establishing the Canadian Railway Office of Arbitration, however, a request for arbitration is to be made, not simply by notice to the other party, but rather by filing notice with the Office of Arbitration (and with a copy to the other party). No Notice of the sort contemplated by Clause 7 of the memorandum was filed within the time limits.
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> The arbitrator's jurisdiction is "conditioned always upon the submission of the dispute to the Office of Arbitration in strict accordance with the terms" of the memorandum. The instant dispute was not in fact submitted in strict accordance with those terms. The matter, therefore, is not arbitrable and the grievance must accordingly be dismissed.

For like reasons I am compelled to find that the two grievances are not arbitrable.

(signed) DAVID H. KATES
ARBITRATOR