

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1800

Heard at Montreal, Thursday, June 16, 1988

Concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

And

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**EX PARTE**

### **DISPUTE:**

Time claims #705 - 706 - 707 - 708 - 709 & 710, dated August 24 - 27 - 28 - 29 - 30 & 31, 1987, respectively, in favour of Locomotive Engineer N.D. Fredericks, P.I.N. 881490 of Prince George, B.C.

### **BROTHERHOOD'S STATEMENT OF ISSUE:**

Mr. Fredericks is claiming six (6) yard shifts as per B.L.E. Agreement 1.2, Articles 90 and 90.3(a) and Article 37.1 of Agreement 1.2.

The Company contends that this grievance was not properly submitted at either Step 1 or Step 2 of the Grievance Procedure. The Brotherhood contends that time limits were not exceeded and the claims should be paid, in any case, as per Article 91.5 of Agreement 1.2.

### **FOR THE BROTHERHOOD:**

**(SGD) P. SEAGRIS**

**GENERAL CHAIRMAN**

There appeared on behalf of the Company:

L. A. Harms	– Labour Relations Officer, Montreal
J. R. Hnatiuk	– Manager, Labour Relations, Montreal
D. C. St. Cyr	– Labour Relations Officer, Montreal
K. MacDonald	– Manager, Labour Relations, Edmonton
D. Lussier	– Coordinator Transportation, Montreal

And on behalf of the Brotherhood:

P. Seagris	– General Chairman, Winnipeg
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### **AWARD OF THE ARBITRATOR**

The grievor maintains that he was wrongfully deprived of work during a period of time when Company operations were disrupted by a strike of employees in other bargaining units. He filed his complaint in the form of time claims which contained the notation "claim shift under Article 90 and Article 37 account strike." Article 90 of the Collective Agreement concerns the manning of assignments in case of work stoppage while Article 37 contains provisions relating to the work guarantee of regularly assigned locomotive engineers. Article 69 of the Collective Agreement governs the filing of time returns.

The scope of Article 69 was reviewed in some detail in **CROA 1799**. It appears plain to the Arbitrator that the provisions of that article do not apply in the case of Locomotive Engineer Fredericks. His was not a case in which he was making a claim for work performed or he was otherwise required to complete a time return as provided under Article 69.4. In essence the complaint of the grievor is an allegation that there has been a violation of the Collective Agreement and should be treated as a grievance filed under the provisions of Article 91 of the Collective Agreement. Under its terms he was required to file his grievance within twenty-eight days of the events giving rise to his claim. The last incident for which he claims wages occurred on August 31, 1987, some forty-two days prior to the date on which the initial claim was received by the Company. In these circumstances the grievance is plainly untimely and, in accordance with the mandatory requirements of Article 91.4, is not arbitrable.

For these reasons the grievance must be dismissed.

June 28, 1988

**(SGD) MICHEL G. PICHER**  
ARBITRATOR