

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 3468

Heard in Montreal, Tuesday, 11 January 2005

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Policy grievance in regard to monetary deductions to Traffic Coordinators on the Halifax Spareboard, Halifax, N.S., this for not being available on scheduled days off.

UNION'S STATEMENT OF ISSUE:

On June (July?) 25, 2000 the Company and the Union entered into agreement establishing working conditions of the Halifax Spareboard. This agreement, in part, established assigned days off without deductions to applicable guarantees and maintenance of earnings.

On November 29, 2002, the Local Chairperson of the Union submitted a grievance claiming the Company had improperly penalized unassigned traffic coordinators (who were assigned to the spareboard) when not available for service as a traffic coordinator while on their assigned days off.

The Company did not respond to the grievance as submitted by the Local Chairperson.

On February 27, 2003, the Local Chairperson, given the non-response from the Company, progressed the grievance to the Office of the General Chairperson for further handling.

On March 4, 2003, the Union submitted a time limit extension request to the Company. The Company did not respond to the Union's request.

On March 10, 2004, the Union submitted a policy grievance with respect to the issues in question.

On April 5, 2004, the Company responded to the grievance stating that although a time limit extension was requested, such was not granted. The Company declined the grievance stating “article 84.5 of the 4.16 collective agreement states “Any grievance not progressed by the Union within the prescribed time limits shall be considered settled on the basis of the last decision and shall not be subject to further appeal.””

On April 29, 2004, the Union advised the Company that it would progress the matter to arbitration and request the arbitrator, if required, to exercise his authority under the Code to extend time limits in order to resolve the issues in dispute.

On December 6, 2004, the Company wrote the Union advising that the Company will be raising a preliminary objection regarding the arbitrability of the Union’s grievance.

On December 6, 2004, the Company wrote CROA&DR (copied to the Union) advising that should the Union progress an *ex parte* statement of issue with respect to the Union’s grievance it would have a preliminary objection regarding arbitrability. The reasons for the preliminary objection provided stated “Grievance not timely and non-specific – no article in Agreement 4.2”.

On December 7, 2004, the Union wrote the Company advising that it would be proceeding to file to arbitration by way of an *ex parte* statement of issue. The Union referenced the Company’s intent to raise its preliminary objection. The Union advised the Company, *inter alia*, that it would request that the Arbitrator address all matters in dispute, including the substantive issue raised by the Union with respect to the grievance submitted.

The Union submits that all matters with respect to the Union’s “Grievance” are now properly before the Arbitrator for resolution.

FOR THE UNION:

(SGD.) R. A. BEATTY
GENERAL CHAIRPERSON

There appeared on behalf of the Company:

J. P. Krawec	– Manager, Labour Relations, Toronto
B. J. Hogan	– Manager, Labour Relations, Toronto
D. Van Cauwenbergh	– Sr. Manager, Labour Relations, Toronto
D. Gagné	– Manager, Labour Relations, Toronto

And on behalf of the Union:

M. Church	– Counsel, Toronto
R. A. Beatty	– General Chairperson, Sault Ste. Marie
J. Robbins	– Vice-General Chairperson, Sarnia
G. Anderson	– Vice-General Chairperson, London
W. G. Scarrow	– Vice-Local Chairperson, Sarnia
R. LeBel	– General Chairperson, Quebec City
B. R. Boechler	– General Chairperson, Edmonton
R. A. Hackl	– Vice-General Chairperson, Edmonton
J. W. Armstrong	– Vice-President, UTU-Canada, Edmonton

AWARD OF THE ARBITRATOR

The Company raises a preliminary objection as to the timeliness of this grievance. The record discloses that on November 29, 2002, the Halifax Local Chairperson of the Union, Mr. Frank Boutilier, wrote to the Superintendent of the Atlantic Zone grieving the Company's decision to penalize Mr. Boutilier in respect of his spareboard guarantee by reason of his having failed to be available when called on a scheduled day off. The matter was submitted by Mr. Boutilier as a policy grievance intended to cover all traffic coordinators similarly penalized. It appears that the Company did not then, or ever, respond to the grievance, which was delivered to it on or about December 5, 2002.

Subsequently, on March 4, 2003 Mr. R.A. Beatty, General Chairperson of the Union for Eastern Canada, wrote to the Company's Labour Relations Officer, Mr. B. Hogan, requesting an indefinite extension of time limits on the grievance, citing the same file number as that appearing on Mr. Boutilier's original grievance. The Company made no indication of its agreement to the request, and essentially provided no response to Mr. Beatty.

Approximately one year later, on March 10, 2004, Mr. Beatty submitted a further policy grievance at Step 3 which essentially concerns the same claim originally made by Mr. Boutilier, referencing the penalties assessed to traffic coordinators of Halifax for

allegedly being not available on scheduled days off. On April 5, 2004 Mr. Hogan responded to Mr. Beatty in the following terms:

In response to your Step 3 appeal of a Policy grievance – Penalties to TC Spareboard Guarantee dated March 10, 2004.

The Company's records indicate that a request for extensions of time limits was submitted on March 04, 2003, which was never granted. Your Step 3 was received in our office on March 10, 2004, for a grievance that transpired on October 22, 2002, approximately a year and a half later, well outside the prescribed time limits. Article 84.5 of the 4.16 collective agreement states "Any grievance not progressed by the Union within the prescribed time limits shall be considered on the basis of the last decision and shall not be subject to further appeal."

Therefore based on the above your grievance is returned to you declined.

Sadly, this dispute brings little credit to either side. For whatever reason, the Union has not diligently pursued the original matter in dispute from the time it was filed in November, 2002 until the purported re-filing of the same grievance in March of 2004. The Company, on the other hand, failed utterly to respond to the initial grievance, then failed equally to respond to the request for an extension of time limits, in effect giving no decision whatsoever with respect to the grievance.

In the Arbitrator's view there was no impediment to the Union in pursuing the grievance filed in 2002, even though the Company did not respond. Indeed, the collective agreement expressly contemplates that possibility, authorizing the Union to proceed. Given the apparent laxity, not satisfactorily explained, on the part of the Union, the Arbitrator is satisfied that this is not an appropriate case for an extension of time

limits within the Arbitrator's discretion under the provisions of section 60 of the **Canada Labour Code**.

The preliminary objection to arbitrability is therefore allowed and the grievance is dismissed.

January 17, 2005

(signed) MICHEL G. PICHER
ARBITRATOR