CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 36

Heard at Montreal, Monday, April 18th, 1966

Concerning

CANADIAN NATIONAL RAILWAYS (PRAIRIE REGION)

and

THE BROTHERHOOD OF RAILROAD TRAINMEN

EX PARTE

DISPUTE:

Involves 35 claims submitted by various yardmen at Winnipeg on various dates between August 1st and September 9th, 1964, for eight hours each account not called to pilot Train No. 9's diesel units between Union Depot and East Yard, Winnipeg.

There appeared on behalf of the Company:

R. St. Pierre	Labour Relations Assistant, C.N.R. Montreal
A. D. Andrew	Senior Agreements Analyst, C.N.R., Montreal
A. J. DelTorto	Labour Relations Assistant, C.N.R. Montreal

And on behalf of the Brotherhood:

H. C. Walsh	General Chairman, B.R.T., Winnipeg

AWARD OF THE ARBITRATOR

Mr. St Pierre outlined on behalf of the Company the reasons it was claimed this matter was barred from arbitration because of it not being presented within the time specified in tho collective agreement.

Article 22, as amended by mutual agreement under date of February 11, 1965, provides, in part:

> "Clause (b) - Final Settlement of Disputes:
>
> A decision rendered under Step 4 of the Grievance Procedure shall be examined in joint conference by the Labour Relations Section of the Personnel & Labour Relations Department at System Headquarters and the General Chairman, prior to appeal to arbitration. The request for joint conference accompanied by the Brotherhood's contention and all relevant information shall be submitted in writing within 60 calendar days from the date decision is rendered at Step 4 of the grievance procedure, otherwise the grievance shall become invalid.

> A grievance which is not settled in such joint conference may be referred by either party to the Canadian Railway Office of Arbitration for final and binding settlement without stoppage of work. A request for arbitration shall be made within 60 calendar days from the date decision is rendered in writing by the Assistant Vice-President - Labour Relations, by filing written notice thereof with the Canadian Railway Office of Arbitration and on the same date a copy of such filed notice will be transmitted to the other party to the grievance.
>
> The time limits specified in this Clause (b) may be extended by mutual agreement between thc Assistant Vice-President - Labour Relations and the General Chairman.

Under date of December 6, 1965, the General Chairman was notified by a letter over the signature of the Assistant Vice-President, Labour Relations, reading in part:

> "In accordance with the procedure set forth in Article 22, Clause (b) of the Yardmen's Agreement, Article 5, Rule 77, Clause (b) of the Trainmen's agreement.....the following disputes were examined in joint conference by the Labour Relations Section of the Personnel and Labour Relations Department and the General Chairman at Montreal on December 1st and 2nd. The decision rendered on each of the disputes is as shown below:"

What followed dealt with matters other than involved in this dispute. With reference to it, however, this appeared:

> "Thirty-five claims submitted by yardman.....
>
> On the basis of the information supplied by the Brotherhood to date all of these claims are denied. However, at the joint conference you stated that the Assistant Yardmaster (s) and Yardmaster (s) who allegedly performed piloting were instructed by the Company to 'pilot' the locomotives. You undertook to supply the Company with statements to that effect signed by the Assistant Yardmaster (s) and Yardmaster (s) involved. We agreed that if such signed documents were received the claims would be further reviewed by the Company and this will be done provided the documents are received in this office prior to the expiration of the 60-day time limit for a request for arbitration as set forth in Article 22, the second paragraph of Clause (b) of the Yardmen's Agreement."

On December 14th the General Chairman replied to the Assistant Vice-President, saying in part:

> "I wish to refer to your comment in Item 2 of your letter dealing with the thirty-five claims.....

For clarification of all concerned I wish to explain that I have undertaken to obtain signed documents to the effect that the yardmasters and assistant yardmasters involved had been instructed or requested to accompany the movements referred to by supervisors and to perform what we contend to be piloting of those movements.

I cannot accept the emphasis placed on the word 'pilot' as shown in your comment."

On January 14, 1966, the Assistant Vice-President replied, stating in part:

"We are at a loss to understand why you object to the emphasis placed on the word 'pilot' in view of the fact that this is the word used by you in submitting the claims to us Furthermore, you are progressing the claims on the basis that Article 4, Clause (a) of the Yardmen's agreement has been allegedly violated, and the article itself most clearly states 'when pilots are required...."

No communication was received from the General Chairman in answer to that letter. On February 23, 1966, a letter from the Assistant Vice-President to the General Chairman said, in part:

"You will recall that you undertook to supply. the Company with statements from Yardmasters and Assistant Yardmasters to the effect that they had been instructed by the Company to 'pilot' locomotives. The Company agreed that, provided such statements were received by this office within the 60 days in which a request for arbitration is to be made, we would review the claims further. That 60 days expired on February 4.

Since the promised statements have not been forthcoming, we are returning herewith the time claims connccted with the dispute."

On February 24th the General Chairman wrote to the Assistant Vice-President, stating in part:

"Please find enclosed a copy of statement received from Yardmaster J. K. Campbell indicating that he was requested to take the diesel units off of Trains 9 and 10 and 103 from the depot to East Yard and return them to the depot."

The crux of Mr. Walsh's argument was that because of what he considered a misunderstanding between the parties as to statements made during the Joint Conference, as indicated by his letter of December 14th, the subsequent, correspondence in effect prolonged the 60 day time limit. This was indicated in a letter from him to the Assistant Vice-President under date of February 28th, twenty-four days after the expiry date, reading in part:

"Please be advised that I do not concur with you; further to your letter of December 6, 1965, I wrote you in connection with this dispute under date of December 14, 1965. You wrote me in connection with this matter on January 14th and I again wrote you on February 24th, therefore the sixty days have not expired

as discussion continued in regard to this matter beyond February 4th."

Apart from any possible misunderstanding, which Mr. St Pierre continued to emphasize the correspondenoe itself indicated did not exist, it is clear that the notice sent the General Chairmen on December 6, 1965, indicated these claims had been disallowed. This set the 60 day period provided in Clause (b) of Article 22 in operation. The claimants then had no contractual rights to a lengthening of that period, unless, as indicated in the final paragraph of that provision, there was mutual agreement to do so.

The Company did not seek mutual agreement for such an arrangement, nor did it indicate any intention to lengthen the period provided. Their right to hold to the 60 day limit was clearly indicated and modified only by the terms it specified, namely, "production of statements from the employees concerned that they had been instructed by the Company to 'pilot' locomotives." This was a limited opportunity being presented, over and above contractual requirements. As indicated, nothing was received until twenty days had expired beyond the limit the agreement provides.

A study of the correspondence reveals no mutual agreement for extension of the time limit. Whatever the General Chairman. considered the distinction that should be emphasized betwccn "the yardmasters and assistant yardmasters involved being instructed or requested to accompany the movement referred to by supervisors and to perform what we contend to be piloting of those movements", as indicated in his letter of December 14th, he was still under the requirement outlined in the company's modification to present whatever he could within the original 60-day period. He wrote one letter on December 14th to the effect outlined, that was quickly followed by a letter from the Company that should have left no doubt as to what he was required to do within the 60 day period. This could not reasonably be considered "an extension by mutual agreement".

The importance of time limits in the processing of grievances need hardly be stressed. Typical of the manner in which Arbitrators have ruled on the question of the failure to comply with such requirements is the dictum contained in an award in Michigan Standard Alloys and International Association of Machinists, reported in 61-3 ARB 8784:

> "The position of the Company is that of strict and rigid adherence to the time limits the parties have provided in their grievance procedure. This is commendable. It is in the interest of good industrial relations that grievances be processed as readily as conveniently possible. Obviously this was the intention of the parties when they chose to write into their grievance procedure time limits that did not permit undesirable accumulation of unprocessed grievances.
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> "The Arbitrator is well aware and conscious that the provisions relating to the processing of grievances are deserving of the same respect and observance as apply to the agreement generally and that these obligations are imposed on the parties as well as the Arbitrator. The parties herein

provided a time limit for the various steps of their grievance procedure not because they wanted to be technical but because they desired that the agreemant be effectively administered."

For the reasons indicated I find this matter cannot proceed to arbitration.

J. A. HANRAHAN
ARBITRATOR