CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.142

Heard at Montreal, Tuesday, March 11th, 1969

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (S.D., P.C. DEPT.)

and

BROTHERHOOD OF RAILROAD TRAINMEN

EX PARTE

DISPUTE:

Concerning the right of the company to deduct time from time tickets submitted by the employees without notifying the employees and giving reasons for said deductions as provided for in the Collective Agreement.

EMPLOYEES' STATEMENT OF ISSUE:

Trip June 23-25, Winnipeg to Vancouver, Chef M. Kiceluk submitted a time ticket for 24 hours and 20 minutes. The company deducted 19 hours from said time ticket and did not notify the employee and give reasons for the deduction.

Trip June 30-July 2, Winnipeg to Vancouver, Chef M. Kiceluk submitted a time ticket for 24 hours and 30 minutes. The company deducted 19 hours from said time ticket and did not notify the employee and give reasons for the deduction.

Trip August 16-18, Winnipeg to Vancouver, Chef M. Kiceluk submitted a time ticket for 24 hours and 10 minutes. The company deducted 19 hours and 10 minutes from said time ticket and did not notify the employee and give reasons for the deduction.

Trip August 23-25, Winnipeg to Vancouver, Chef M. Kiceluk submitted a time ticket for 24 hours and 25 minutes. The company deducted 19 hours and 20 minutes from said time ticket and did not notify the employee and give reasons for the deduction.

The Brotherhood contends that Chef Kiceluk was not notified and reason given for the above deductions on the proper form used for notification of deductions of portions of time tickets; corrected time tickets were not returned to him, nor was he informed even verbally of the deductions and reasons for them.

In view of the foregoing the Brotherhood further contends the company are in violation of Article 7, first and second paragraph of the Collective Agreement.

FOR THE EMPLOYEES:

(Sgd) J. R. BROWN
GENERAL CHAIRMAN

There appeared on behalf of the Company:

T. P. James	- Manager, S.D., P.C. & News Dept., C.P.R. Montreal
J. W. Moffatt	- General Supt., S.D., P.C. & News Dept., C.P.R. Montreal

And on behalf of the Brotherhood:

J. R. Browne	- General Chairman, B.R.T., Montreal

AWARD OF THE ARBITRATOR

The union's contention in this case is set out in the ex parte statement of issue. The company denies this contention, and also takes the objection that the matter is not properly before the arbitrator, since (in the company's submission), the proceedings for final disposition of the grievance were not instituted within the time limits specified in the fifth paragraph of article 7 of the collective agreement. This award deals only with that preliminary objection.

Although there had been earlier discussions and correspondence on this matter the grievance procedure was formally invoked in a letter dated August 31, 1968, from the General Chairmau of the union to Mr. James. The company's reply, signed by Mr. James, was made on September 17, 1968, and was as follows:

> "Referring to your letter of August 31st, concerning disallowance of time claimed by dining car employees, Winnipeg District, during period June lst - August 31st, 1967.
>
> I am informed by our Superintendent at Winnipeg that all employees are notified of any adjustments made in time claims"

The next step was taken by the union on October 23, when Mr. Browne wrote Mr. James, contending that in fact the employees concerned in the grievance had not received proper notice of the disallowance of their claims. No reply was made by the company, and on Decembcr 10, Mr. Brown wrote again to Mr. James with respect to a joint statement of issue to be submitted to arbitration. To this Mr. James replied, on December 24, that in view of his "final reply" dated September 17, no furthcr action could be taken in the matter by reason of the provisions of article 7.

Article 7 is as follows:

> "Article 7 - WAGES TICKETS
>
> Ticket not allowed will be promptly returned. If not

returned to the employee within 60 calendar days the claim will be paid.

When portion of claim is not allowed the employee will be promptly notified and reason given; the undisputed portion to be paid on current payroll.

If an appeal is to be made regarding a claim not allowed, it must be presented in writing by the employee or his accredited representative to the proper officer of the railway within 60 calendar days from the date he was advised the claim was not allowed.

Claim made within the prescribed time limits, when disallowed. may be progressed with the higher officers of the railway in their proper order on appeal in writing within 60 calendar days from the date of each notification of declination, otherwise such claim becomes invalid

The decision by the highest officer designated by the railway to handle claims shall be final and binding unless within 60 days from the date of such officer's decision such claims is disposed of on the property or procecdings instituted for the final disposition of the claim by the employee or his accredited representative and such officer is so notified. It is understood, however, that the parties may by agreement in any particular case extend the 60-day period herein referred to."

It is the company's position that proceedings for the final disposition of the claim were not instituted by the union within 60 days from the date of the decision of the highest officer designated by the railway to handle claims. Mr. James was such officer, and his letter of September 17 plainly enough constitutes his decision in the matter. It may be, as Mr. Browne argued, that the decision was unsatisfactory, and it may be that the information Mr. James had received was not correct; the important point here, however, is that Mr. James' letter plainly constitutes a denial of tbe grievance.

The claim was not "disposed of on the property", and tLe union did not "institute proceedings for final disposition of the claim" within the 60-day period referred to in Article 7. The union's letter of October 23 is a response to the company's letter of September 17, but it is clearly intended to cause Mr. James to change his earlier decision. It is an attempt to dispose of the matter "on the property", and it does not institute proceedings for final disposition of the claim". The arbitration process was not sought to be invoked until the union's letter of December 10, written after the expiry of the 60-day period.

It follows that pursuant to article 7 of the collective agreement. the decision of Mr. James is final and binding, and I have no jurisdiction to hear the claim. Under the rules of the Office of Arbitration, as under the general law, I an strictly bound by the procedures to which the parties have agreed. There is no doubt that time limits must be strictly adhered to: see Union Carbide Canada Ltd. v. Weiler, 70 D.L.R. (2d) 333, and Canadian Railway Office of

Arbitration Cases Nos. 36, 60 and 82.

For these reasons, the preliminary objection must be sustained, and the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR