CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 255

Heard at Montreal, Tuesday, December 8th, 1970

Concerning

CANADIAN PAClFlC RAlLWAY COMPANY

and

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

EX PARTE

DISPUTE: .

Discipline assessed Miss P.A. Hutchison, Senior Keypunch Operator, Eastern Region Data Centre, for failing to fulfill her responsibilities as Senior Keypunch Operator.

EMPLOYEES STATEMENT OF ISSUE:

On February 24, 1970, Miss P. A. Hutchison was advised by Mr. R. A. Marks, Supervisor, Eastern Region Data Centre, that she was being removed from her position of Senior Keypunch Operator and was being demoted to the position of Keypunch Operator as a disciplinary measure. The Brotherhood claimed that Miss Hutchison was improperly disciplined when demoted to the position of Keypunch Operator and requested that she be re-instated to her former position and compensated for lost wages.

FOR THE EMPLOYEES:

(SGD.) W. T. SWAIN
GENERAL CHAIRMAN

There appeared on behalf of the Company:

J. McL.	Marshal	Director of Data Systems, CPR, Montreal
N. W.	Patteson	Chief of Data Centres, CPR, Montreal
J. B.	Chabot	Manager Labour Relations, CPR, Montreal

And on behalf of the Brotherhood:

W. T.	Swain	General Chairman, B.R.A.C., Montreal
M.	Peloquin	Admn. Asst. to lnt'l Vice-Pres., BRAC, Montreal
D.	Herbatuk	Vice General Chairman, BRAC, Montreal

AWARD OF THE ARBITRATOR

The Company has raised the preliminary objection that this matter is not arbitrable, on the ground that notice to arbitrate was not given within the proper time limits.

There is no objection taken with respect to the original filing of the grievance, or its progress through the grievance procedure as set out in the collective agreement. It is sufficient to say that the matter came to the attention of Mr. J. McL. Marshall, the "highest officer designated by the Company", and was dealt with by him ln a letter to the Union dated May 27, 1970. This letter set out in detail the Company's version of the facts of the matter, and concluded as follows:

> "In the circumstances, I am unable to find grounds for reversing the decision of the Supervisor and reinstate Miss Hutchison in the position of Senior Keypunch Operator. The claim of the Brotherhood is therefore regretfully declined."

By article 11 (g) of the collective agreement, disputes not settled in the course of the grievance procedure may be referred by either party to the Canadian Railway Office of Arbitration. The collective agreement itself does not set out any time limits within which this may be done, and the matter is governed by article 7 of the Memorandum of Agreement establishing the Canadian Railway Office of Arbitration. That article is as follows:

> "7. No dispute of the nature set forth in Section (A) of Clause 4 may be referred to the Arbitrator until it has first been processed through the last step of the Grievance Procedure provided for in the applicable collective agreement. Failing final disposition under the 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 decision was rendered in the last step of the Grievance Procedure.
>
> No dispute of the nature set forth in Section (B) of Clause 4 may be referred to the Arbitrator until it has first been processed through such prior steps as are specified in the applicable collective agreement."

Under these provisions, if Mr. Marshall's letter of May 27, 1970, constituted the rendering of the decision in the last step of the grievance procedure, then it was incumbent on the Union, if it wished to do so, to give notice to arbitrate within 60 days, that is, by July 26, 1970. In fact, such notice was given by letter dated July 27, 1970. Taking the dates of the letter in question as the effective dates for the purpose of calculating the time limit (and even if it should be assumed that the dates of receipt of these letters were to be considered, it would not affect the matter), then it would have to be said that notice to arbitrate was not given within the time specified.

It was the Union's contention, however, that Mr. Marshall's letter of May 27, 1970, was not a final decision on the matter by the Company. Having regard to the letter itself, this contention could not be accepted. As in Case No. 142, the letter quite plainly and indeed expressly constitutes a denial of the grievance. Under the governing procedures, the Union was then entitled to proceed to arbitration within the specified time limits or to let the matter drop. On June 16, 1970, however, the Union wrote again to Mr. Marshall, the substance of the letter being as follows:

> "Your allegations are under investigation and you will be advised what action is contemplated when this investigation is completed."

The "allegations" referred to were no doubt the Company's version of the facts as set out in Mr. Marshall's letter of May 27. That letter did not, however, call on the Union to investigate or comment on any of the statements made. It simply set out the Company's reasons, good or bad, for taking the action it did. lt then stated that the grievance was declined. The Union's statement that it was investigating the Company's "allegations" was not, and could not reasonably be taken to be a request for an extension of the time limit set out in Article 7 of the Memorandum of Agreement establishing the Canadian Railway Office of Arbitration, which was the provision then governing the matter. It was as has been mentioned, on July 27, 1970, that the Union wrote again to the Company, asking that the grievor be reinstated in her position or, failing that, that the Company join in a submission to the Office of Arbitration. On August 17, 1970, the Union requested a reply to its letter, but it was not until September 21 that the Company did so, setting out its position that the matter was not arbitrable. To this, the Union replied, on September 30, 1970, in part as follows:

> "Your decision not to Join me in submitting this case to the Canadian Railway Office of Arbitration is both regrettable and surprizing. I do not agree with your contention that the time limit should commence from the date of May 27, 1970. In your letter of that date, you gave many reasons why this action was carried out and it was our responsibility to confirm or discredit these allegations, and in my letter of June 16th I advised you that this was the action being taken and that you would be advised how we would proceed when this investigation was completed. If you had advised me at that time that your decision of May 27th was final, we would have proceeded on that basis. As you did not do so, it is our opinion that our letter of June 16, 1970 served to keep this case active and that time limit should not have commenced until receipt of your negative reply to my letter of July 27, 1970.

It is not possible to accept the interpretation of these letters advanced by the Union. The Company's letter of May 27 was, as I have said, clear on its face, and constituted the final denial of the grievance. The Union's letter of June 16 simply indicated that the Union was making its own investigations. lt was not a request for an extension of time limits, and while it was perfectly proper for the Union to continue its investigations it could not thereby, except by

agreement, affect the procedures set out in the Memorandum of Agreement. No request was made of the Company, and there would be no reason for the Company to consider that its position was somehow prejudiced by the Union's letter of June 16. lt should have been clear that the letter of May 27 did set out a final decision, and it was not necessary for the Company to repeat it, either after receipt of the letter of June 16, or after receipt of that of July 27. The effect of the Union's contention is really that the parties had somehow implicitly agreed on the insertion of an extra stage into the grievance procedure, but in my view this was not the case, and could not reasonably have been thought to be so.

The requirement of strict compliance with the procedural requirements of the collective agreement and of the Memorandum of Agreement establish the Canadian Railway Office of Arbitration has been referred to many times in the cases. Where there is proper room for doubt, it is my view. there should be a presumption in favour of hearing cases on their merits. In the instant case however, there can be no legitimate doubt that Mr. Marshall's letter of May 27, 1970, was the final decision in the grievance procedure, and that the 60-day limitation period then ran. Notice to arbitrate was not given within that period, and I have no alternative but to dismiss the grievance.

J. F. W. WEATHERILL
ARBITRATOR