CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 259

Heard at Montreal, Tuesday, January 12th, 1971

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (T)

EX PARTE

DISPUTE:

A dispute between the Canadian Pacific Railway Company and the United Transportation Union (T), Eastern and Atlantic Regions, concerning the Company's refusal to supply sleeping accommodation for the Ottawa Trainmen operating into Montreal.

EMPLOYEES STATEMENT OF ISSUE:

In September 1970, the Canadian Pacific Railway Company, Atlantic Region, closed out the account for sleeping accommodations for the Ottawa Trainmen operating into Montreal on Trains No. 1 and No. 2 via the M&O Subdivision, at the Queens Hotel, Montreal.

This was done without prior notification to the Union.

It is the contention of the United Transportation Union (T), CP Eastern and Atlantic Regions, that the Company is in violation of Clause (e) of the Pooled Caboose Agreement of the Collective Agreement between Canadian Pacific Railway Company and the United Transportation Union (T) Eastern and Atlantic Regions, that states "Passenger trainmen will be provided with suitable sleeping quarters at away-from-home terminals convenient to passenger stations", and also Article 45, Clause 1, Paragraphs (a), (b) and (c) of the Collective Agreement.

FOR THE EMPLOYEES:

(SGD.) L. H. BREEN
GENERAL CHAIRMAN

There appeared on behalf of the Company:

J. Ramage	Special Representative, CP Rail, Montreal
C. E. Moore	Supervisor Labour Relations, CP Rail, Montreal
D. D. Wilson	Labour Relations Officer, CP Rail, Montreal
R. L. O'Meara	Labour Relations Assistant, CP Rall, Montreal

And on behalf of the Brotherhood..

L. H. Breen	General Chairman, U.T.U.(T) - Montreal
D. E. Gaw	Secretary, Local 390, U.T.U.(T) - Ottawa

AWARD OF THE ARBITRATOR

The Company raises the preliminary objection that this matter is not arbitrable, having been brought to arbitration and then withdrawn.

On September 8, 1970, there was filed in the Canadian Railway Office of Arbitration a request for ex parte hearing of a dispute concerning the unilateral action taken by the Company in closing out their account for the Ottawa trainmen operating into Montreal on Trains No. 1 and No. 2 at the Queen's Hotel, Montreal, effective September 5, 1970." This request was granted on September 14, and the matter was set for hearing on October 14, 1970. In the Employees Statement of Issue, it was contended that the Company was in violation of Article 45, "Material Change in Working Conditions of the collective agreement in effect between the parties.

On September 18, 1970, the Company raised a number of objections going to the arbitrability of the matter, and requesting that the hearing set for October 14 be restricted to the question of arbitrability. This request was communicated to the Union. On September 23, 1970 the Union wrote the Office of Arbitration, giving notice of withdrawal of the request for an ex parte hearing. No reasons were given for the withdrawal. On September 25, 1970, the Union was advised by the Office of Arbitration that the matter had been withdrawn.

On December 7, 1970, there was filed in the Canadian Railway Office of Arbitration a request for ex parte hearing of a dispute concerning "the unilateral action taken by the Canadian Pacific Railway Company, Atlantic Region,in closing out the account for sleeping accommodations for the Ottawa Trainmen operating into Montreal on Trains No. 1 and No. 2 via the M. & O. Subdivision, at the Queen's Hotel, Montreal, in September, 1970". This request was, as a matter of course, granted, and the Company has raised the preliminary objection which must now be dealt with. Having regard to the particular circumstances of the case, the matter was heard on January 12th, 1971, both as to arbitrability and on the merits, the arbitrator reserving his ruling as to arbitrability. That matter must, however, be determined prior to any consideration of the merits of the case.

There is no doubt that the issue now sought to be brought to arbitration is, in all substantial respects, the same as that which was submitted to arbitration, and withdrawn, in September 1970. What is complained of is the decision by the Company no longer to provide accommodations for certain employees in Montreal. The propriety of that decision is the subject of the dispute in both cases.

It should be noted that, although the employees affected may be the same this question is entirely different from the question raised in Cases 157 and 230, which dealt with the suitability of accommodations

provided for employees. In the instant case, the Company has rebulletined the assignment in question so as to make Montreal the "home terminal", and denies that any accommodation need be provided in that city. The Union alleges that this change involves Article 45 of the collective agreement, a conclusion denied by the Company. The question which arises is clearly quite different from that which arose in the earlier cases.

There can, however, be no doubt that the grievance in the instant case is precisely that which was brought to the Office of Arbitration in September, 1970, even though it may then have been couched in slightly different terms. The grievance was then withdrawn, and the question to be decided is whether it can be brought again.

The matter was withdrawn from arbitraticn in September, 1970, upon the request of the Union. The withdrawal was not conditional. In my view the Union is not entitled to bring the same grievance to arbitration a second time. As in Case No. 26, there was an unqualified withdrawal, and as in that case, it must remain so. A number of awards in arbitration cases have reached the same conclusion: a case which is brought to arbitration and is then withdrawn has the same status as a case which has been decided or settled: the proceedings have gone as far as they can go, and are terminated. Withdrawal of a case from arbitration is, and must be regarded as tantamount to an acknowledgment of settlement. There is, of course, no determination by the arbitrator which might have an effect in future cases, but there is a conclusion to the particular case. Similarly, where the Company accepts liability and settles a case before it has been determined by the arbitrator it cannot later revoke that settlement (except, perhaps, on grounds of fraud), and seek to reopen the matter: it has been finally disposed of. The same must be said in this case. Whether the Union's case had merit or not, the fact is that it was withdrawn from arbitration. The reasons for that withdrawal might be the subject of speculation, but such speculation would be quite fruitless. Once the matter has been brought to arbitration, it is then within the jurisdiction of the Office of Arbitration, and is not capable of being turned on and off at will by the individual parties. When it is withdrawn, settled, or decided, it has then come to an end. The same matter, as was well said by Mr. J. A. Hanrahan in the Ferranti-Packard Electric case, 12 L.A.C. 216, cannot be grieved over and over again.

It may be of interest to compare the Massey-Ferguson case, 20, L.A.C. 291. There, the Union, desiring for its own good reasons to have a case which had been set for hearing adjourned wrote the arbitrator that it wished to withdraw a particular grievance. "Nothing was said, however, as to the reason for the withdrawal. Subsequently, it was sought to bring the same matter on for hearing before another arbitrator, and it was held by the latter, Professor E. E. Palmer, that the matter was not arbitrable. It had been "withdrawn", and the company was entitled to rely on the normal meaning of that term. The cases are considered in the City of Sudbury case, 15 L.A.C 403, by his Honour Judge Reville, who pointed out (and I respectfully agree) that:

> "The authorities are legion that a Board of Arbitration has no jurisdiction to consider or, alternatively that the grievor and

his or her Union Representative are barred and estopped from processing a grievance which is identical to a former grievance filed by the grievor and either withdrawn, abandoned or settled, or determined by a Board of Arbitration."

In the instant case the matter was, whether for good reasons or bad, finally determined by the action of the Union in withdrawing it from arbitration. There is no jurisdiction to list the matter for arbitration again in these circumstances. Accordingly, I may not proceed further in the matter and the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR