CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 279

Heard at Montreal, Tuesday, May 11th, 1971

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

EX PARTE

DISPUTE:

The Brotherhood claims that the Company violated Article 2.1, 24.2 and 24.5 of Agreement 5.1, and that Settlement Clerk L. M. Fagan was unjustly dealt with when his personal belongings were searched by a C.N.R. Constable.

EMPLOYEES' STATEMENT OF ISSUE:

At the completion of his regular tour of duty on May 26, 1970 Mr. Fagan, who was leaving the Railway premises, was stopped by a Canadian National Railway Constable and subjected to a search of his personal belongings (utility bag). He objected to it, but to no avail.

The Brotherhood contends that such action on the part of the Railway Constable is in violation of the terms of Agreement 5.1, and claims that Mr. Fagan has been unjustly dealt with.

FOR THE EMPLOYEES:

(SGD.) J. A. PELLETIER

There appeared on behalf of the Company.

D. O. McGrath	System Labour Relations Officer, C.N.R., Montreal
E. A. Spearing	Director of Investigation, C.N.R., Montreal
W. Skelly	Superintendent of Investigation, C.N.R., Toronto

And on behalf of the Brotherhood:

J. D. Hunter	Regional Vice President, C.B.R.T.&G.W., Toronto
G. Wilson	Local Chairman, Lo. 26, C.B.R.T.&G.W., Toronto
L. M. Fagan	(Grievor)

AWARD OF THE ARBITRATOR

The grievor was, as stated in the Employees' Statement of Issue, subjected to a search of his utility bag as he left the Company's premises following his tour of duty on May 26, 1970. This was the first time in some fourteen years' employment with the company that the grievor had been subject to such a procedure. It was the evidence of other union witnesses that they had never, over many years with the company, had a similar experience. On the other hand, it was the company's evidence that spot checks have been conducted where it was thought necessary, throughout the system, for many years.

Past practice is of little import in such a case. The question is whether the company is entitled to subject its employees to checks of this sort. The examination of the grievor's belongings was clearly in the nature of a spot check, and was not part of any "investigation" of any alleged irregularity involving him. In the grievance reference is made to three articles of the collective agreement, but of these, it is clear that only article 24.2 is material. Article 2.1 is the recognition clause, and Article 24.5 provides for a grievance procedure. Nothing in the material before me suggests any violation of these provisions.

Article 24.2 is as folloWs.

"24.2 Investigations in connection with alleged irregularities will be held as quickly as possible. An employee may be held out of service for investigation (not exceeding three (3) working days). He will be given at least one (1) day's notice of the investigation and notified of the charges against him. This shall not be construed to mean that a proper officer of the Company, who may be on the ground when the cause for investigation occurs, shall be prevented from making an immediate investigation. An employee may, if he so desires, have the assistance of one (1) or two (2), fellow employees, or accredited representatives of the Brotherhood, at the investigation. Upon request, the employee being investigated shall be furnished with a copy of his own statement, if it is made a matter of record at the investigation. The decision will be rendered within twenty-one (21) calendar days from the date the statement is taken from the employee being investigated. An employee will not be held out of service pending the rendering of a decision, except in the case of a dismissible offence."

Routine inspection of lunch pails or packages being carried out of employers' premises are a common procedure in industry. While the practice is, in a sense, a sort of "investigation" within the everyday meaning of that word, it does not constitute an investigation within the meaning of Article 24.2. Wbat is involved here is simply a surveillance of employee conduct on the premises, a matter well within the normal managerial process and not restricted by anything in the collective agreement. It is not necessarily an exercise of any of the special powers held by the company's police as peace officers, but is simply an exercise of management's right to check what may be carried off its premises.

There is nothing in the circumstances of this case to indicate that the grievor was being deliberately victimized or embarrassed by this procedure. He may have found it a distasteful matter, but the fact is that it is a normal incident of industrial life, and, at least in this case, carried no particular implications with respect to the grievor. In my view, there was no violation of the collective agreement in these circumstances.

Accordingly, the grievance is dismissed.

J. F. W. WEATHERILL
ARBITRATOR