CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 280

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 24.2 of Agreement 5.1 when it denied Warehouseman J. Kriticos the assistance of a Union Representative when questioned by the Investigation Department.

EMPLOYEES' STATEMENT OF ISSUE:

On October 15th, 1969, Mr. J. Kriticos was requested to report to the Office of the Investigation Department, Toronto, Ontario, at which time he was questioned in connection with missing watches.

The Brotherhood contends that, in accordance with Article 24.2 of Agreement 5.1, proper notice should have been given and that Mr. Kriticos should have been provided the assistance of a Union Representative at the time of investigation. Since this right was denied to Mr. Kriticos, it is claimed that he has been unjustly dealt with.

The Company claims that Mr. Kriticos was not charged with any offense nor that he was held for investigation under the terms of Agreement 5 but was questioned by a Canadian National Police Constable.

FOR THE EMPLOYEES:

(SGD.) J. A. PELLETIER
NATIONAL VICE-PRESIDENT

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.A 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
T. N. Stol	Local Chairman, Lo. 26, C.B.R.T.&G.W., Toronto
J. Kriticos	(Grievor)

AWARD OF THE ARBITRATOR

Article 24.2 of the collective agreement provides as follows:

"24.2 Investigation 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."

On October 15, 1970, Mr. Kriticos was instructed to report to the company's investigation office some time near or at the end of his tour of duty. He did so. He was asked to empty his pockets. he was partially searched; he was taken to a room with two other employees and two company constables; he was taken to another room, and then to yet another, where he was placed facing a doorway while someone walked by, presumably in an attempt to identify him. He was questioned with respect to the theft of some watches; he was accused of theft, although he was not charged; he was not cautioned; he was no permitted a lawyer or a union representative; he was not permitted to telephone although his children were at home in the care of a baby sitter who had to attend school.

The events just described certainly did not meet the requirements of Article 24.2 of the collective agreement. The question in this case is whether the company was obliged to comply with that section in connection with these events. Clearly this was not the usual sort of investigation held in connection with disciplinary matters. It did not in fact result in any discipline being imposed on the grievor, but this fact would not excuse the impropreity of the procedure described if in fact it was subject to the requirements of Article 24.

The questioning of Mr. Kriticos was done by members of the company police who acted, it seems, on information received from other employees and which tended to implicate Mr. Kriticos in certain thefts. The company's constables are peace officers, with certain

powers under the Criminal Code and under the Railway Act. No doubt they had reasonable cause to wish to question Mr. Kriticos. In the exercise of their powers of investigation, they seem to have taken advantage of the company's ordinary supervisory authority to have the grievor "instructed" to report for questioning. There was, as I have said no charge laid, and there seems to have been no arrest, although the company constabulary would be empowered to take such steps in a proper case. What they were doing was no doubt with the best of motives, "investigating" a case in the usual sense of the word.

Because of the relationship between employer and employee, the company police would seem, in fact, to have rather more power over an employee than they would have over a private citizen not in the employ of the company. While the company police, in the exercise of their duties, may quite properly exercise the powers of peace officers, they are at the same time employees of the company and their acts are the acts of the company. In its relations with its employees the company is bound by the provisions of the collective agreement and whatever may be the situation under the general law, it is the rights of the parties under the collective agreement which I am obliged to determine.

While the action of the company's police in this case was not the action of the industrial relations department, or of any of the operating departments of the company, it was nevertheless quite clearly the act of the company itself. In fact, the company required Mr. Kriticos to attend for questioning, and the company did question him, in connection with what was obviously an "alleged irregularity". Section 24.2, in my view, quite clearly addresses itself to the rights of employees in such circumstances, it is not open to the company to evade its requirements by failing to formulate the charges which it is in fact investigating. An employer may indeed fall upon an employee to account for suspicious circumstances: REXALL DRUG, 18 LAC342; in this case, it may well have been that the employee's failure to come forward and explain could be held against him. Quite clearly, however, what was done here goes well beyond the type of day-to-day query respecting an employee's work or conduct which is a normal part of industrial life, and could not be said to constitute an "investigation" as the term is used in Article 24.2. For an example of such a normal inquiry, not requiring compliance with Article 24.2, see Case No. 279.

Article 24.2 provides certain safeguards for employees being investigated in connection with alleged irregularities. One of the most important of these is the right of representation. The procedure followed by the company in this case deprived the employee of that right at the time when it was most important to him. In carrying out this investigation in the manner it did, while the company's officers may have been exercising their powers under the Criminal Code or the Railway Act, the company was in violation of its obligations under the collective agreement. In this connection I must, with respect, express my disagreement with what is said in the Award of Mr. Charles O'Connor, Q.C., dated November 7, 1967, in an arbitration between the company and the Brotherhood of Railway and Steamship Clerks. It was said there that the provisions of the collective agreement equivalent to those of Article 24.2 of the agreement before me did not apply to investigations carried out by

the railway police. No doubt there are many functions to be carried out by the railway police that are not at all inhibited by anything contained in the collective agreement. But the provisions of Article 24.1 impose certain obligations on the company with respect to investigations. Whether the company acts through its police officers or otherwise, it has subjected itself to the terms of the collective agreement, and is bound by them.

For the foregoing reasons, it is my conclusion that the grievance must succeed. The proper form of award is to declare that the company was in violation of Article 24.2 of the collective agreement in the circumstances of this particular case.

(SGD.) J. F. W. WEATHERILL
ARBITRATOR