CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 433

Heard at Montreal, Tuesday, January 8th, 1974

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

TRANSPORTATION-COMMUNICATION DIVISION OF BRAC

EXPARTE

DISPUTE:

Train Dispatcher G. R. Hales, Sudbury, Ontario, reduced to a permanent Operator for iailure to issue a slow order on April 27, 1973.

EMPLOYEE'S STATEMENT OF ISSUE:

On Friday, April 27, 1973, at approximately 1320K, Mr. G.R.Hales, Train Dispatcher at Sudbury, Ontario, was instructed by telephone to place a slow order of ten (10) miles per hour account defective rail at Mileage 43 Cartier Subdivision. Mr. Hales neglected to do so immediately with the result that Extra 4087 West passed over the location at normal track speed.

The Union contends that the discipline assessed was too severe and that Mr. Hales should be returned to his former position immediately, with full seniority rights.

The Company contends that the severe disciplinary action taken was fully warranted.

FOR THE EMPLOYEES:

(SGD.) R. J. CRANCH
SYSTEM GENERAL CHAIRMAN

There appeared on behalf of the Company:

H. E. Lyttle	Supervisor Labour Relations, CP Rail, Toronto
D. V. Brazier	Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood..

R. J. Cranch	System General Chairman, TC Div. of Brac, Montreal

AWARD OF THE ARBITRATOR

This grievance relates to certain discipline which was imposed on the grievor on May 3, 1973. The matter was, it seems,properly processed through the several stages of the grievance procedure, being appealed at Step 3 by the System General Chairman to the Company's General Manager. The decision at Step 3 was given on August 13, 1973. The Company's position is that the matter was not then referred to arbitration within the time limits provided.

Article 9.2 (e) of the collective agreement is as follows:

> "(e) Step 4 - If the grievance is not settled at Step 3, it may then be referred by either party to the Canadian Railway Office of Arbitration for final and binding settlement without stoppage of work in accordance with the rules and procedures of that Office. The party requesting arbitration must notify the other party in writing within twenty-eight calendar days following receipt of the decision in Step 3, or the due date of such decision, if not received.

The Union's request for arbitration of the matter was sent to the Company on October 2, 1973. This was, it was acknowledged, outside of the period set out in the collective agreement for the making of such a request. It has been held in a number of other cases in the Canadian Railway Office of Arbitration that the Arbitrator has no Jurisdiction to hear a case where it has not been processed in accordance with the provisions of the agreement.

In the instant case, it was suggested that the Union's failure to proceed within the time limits might be explained by the existence of certain other pressing commitments of the System General Chairman. Under the collective agreement, however, and under the memorandum establishing the Canadian Railway Office of ArbitratIon, an Arbitrator has no power to grant relief against the hardships which may occur in certain cases where time limits of this sort are not complied with.

In addition, it was suggested that the effect of a letter written by the Union to the Company on September 10, 1973 - within the time for referral of the matter to arbitration - was somehow to stop the running of the time limits. In this letter the Union referred to a portion of the statement given by the grievor at his investigation. The letter concluded:

> "Before proceeding further, I would appreciate if you would advise me as to the results of the defect in the rail which was tested by the Sperry Car on the day in question."

The Company never complied with this request, taking the position that the information sought was not relevant to the matter of the grievor's discipline. In my view, the information should have been provided, since the matter of the seriousness of the grievor's error could indeed be a matter arguably relevant to the Union's case. Even if the information were subsequently to be regarded as having no or very little weight, the Company was wrong in dismissing it as immaterial. The Company's letter to this effect was sent on

September 28, 1973, and the Union's request for arbitration was thereupon made on October 2, the copy filed bearing a receipt stamp of October 4. It would appear that, even if the period of time between the Union's request for information on September 10, and the Company's reply of September 28 be excluded from the calculation of the time, the request for arbitration was, by a narrow margin, late.

In the circumstances it is not necessary to decide the point whether the time in which a party may await information such as that requested in the Union's letter of September 10 is to count in the computation of the time for requesting arbitration. That question would have to be decided where, after excluding such period of time, a timely request was made. The letter of September 10 did not, in terms, contain any request for the extension of the time limits, and the Company did not give any express oonsent to any extension. If, in the circumstances, some sort of consent were to be implied or to be attributed to the Company, it would not be for a period longer than that covered by the correspondence, so that in the instant case it would stil be the result that strict compliance with the time limits had not been achieved.

For the foregoing reasons, the only conclusion open to me is, as the earlier cases have pointed out in similar circumstances, that l have no jurisdiction to hear the matter on the merits, and that the grievance is not arbitrable.

J. F. W. WEATHERILL
ARBITRATOR