CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 487

Heard at Montreal, Tuesday, December lOth, 1974

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADlAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DlSPUTE:

The Brotherhood alleges that the Company violated Article 24.8 (b) of the Agreement when it failed to render a decision within the time limits on a claim for additional compensation to an employee classified as Maintenanceman at the Toronto Express Terminal.

JOINT STATEMENT OF ISSUE:

On September 17, 1973 the Brotherhood lodged a grievance on behalf of Mr. N. Marshall, Maintenanceman at Toronto Express, alleging that for welding guards for electrical boxes at the Express Terminal Mr. Marshall should be compensated at the rate of pay of a welder in the Bridge and Building Department represented by the Brotherhood of Maintenance of Way Employees. This rate of pay is some 29 cents per hour higher than that of the Maintenance man under Agreement 5.1.

The grievance alleges that the same type of welding duties were performed by another Maintenanceman under Agreement 5.1, a Mr. Mills, earlier in 1973 and were compensated for at the higher Bridge and Building rate of pay The Company contends that the welding duties performed by Mr. Marshall were a normal part of his job of Maintenaceman under Agreement 5.1 with the C.B.H.T. and G.W. whereas the duties performed by Maintenanceman Mills earlier in 1973 were normally performed by Bridge and Building employees under another wage agreement with the B.M.W.E. and that in utilizing Maintenaceman Mills to perform those welding duties the Company was assigning him to work for the Bridge and Building Department as part of an in-Company safety campaign to speed up repairs to the Express Terminal and for those duties the Company agreed to pay Mr. Mills the higher Bridge and Building rate of pay.

In processing this grievance the Brotherhood wrote to the Company at the third step of the grievance procedure on December 10, 1973 and the Company acknowledged receipt of this grievance in a letter dated December 18, 1973. On January 22, 1973, the Brotherhood wrote again to the Company at the third step of the grievance procedure advising that since the time limit for a Company decision had passed the Brotherlood sought a settlement of the claim under the provisions of Article 24.8(b) as a claim for unpaid wages.

The Company disputes that this is a claim for unpaid wages as provided for under Article 24.8(b) since the scope of the welding

duties performed by the grievor fall within the duties of a Maintenanceman under Agreement 5.1 and tha the grievor was correctly compensated at the negotiated rate of pay for maintenanceman for such welding duties.

This grievance has been processed through the various steps of the grievance procedure and ultimately to arbitration.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD.) J. A. PELLETIER NATIONAL VICE-PRESIDENT	(SGD.) S. T. COOKE ASSISTANT VICE-PRESIDENT LABOUR RELATIONS

There appeared on behalf of the Company:

P. A. McDiarmid	System Labour Relations Officer, C.N.R., Montreal

And on behalf of the Brotherhood:

J. D. Hunter	Regional Vice President, C.B.R.T., Toronto

AWARD OF THE ARBITRATOR

Article 24.S (b) of the collective agreement provides as follows

> "(b) Effective July 14, 1971, when a grievance based on a claim for unpaid wages is not progressed by the Brotherhood within the prescribed time limits, it shall be considered as dropped. When the appropriate officer of the Company fails to render a decision with respect to such a claim for unpaid wages within the prescribed time limits, the claim will be paid. The application of this rule shall not constitute an interpretation of the collective agreement."

The grievance in the instant case involves a claim for a particular wage rate for the performance of certain work. The claim was filed in timely fashion. There is no allegation of non-compliance with Steps 1 and 2 of the grievance procedure. The appeal at Step 3 was made by letter dated December 10, 1973. While certain correspondence was exchanged, no reply was made to the Step 3 appeal until February 7, 1974, well in excess of the 28-day period provided for reply at Step 3. No request for an extension of the time limit seems to have been made.

If, then, the instant case is a "claim for unpaid wages" within the meaning of Article 24.8 (b), it is clear that the grievance must succeed on that ground alone, and that the claim be paid as required by that article. The Company takes the position that this case does not involve a "claim for unpaid wages" because the wage-level claimed is not one provided under the collective agreement, but relates to another agreement. A "wage" it is said, can only mean an amount required to be paid under a particular agreement, and compensation going beyond the scope of such agreement is not a wage in the proper sense.

I am unable to accept this contention. Certainly it is the case that an Arbitrator's Jurisdiction is limited to the determination of claims based on the particular collective agreement binding the parties in question. But the question whether or not a claim of entitlement under an agreement is valid or not, that is, whether the claim is entitled to succeed, is very different from the question whether a demand for payment constitutes a "claim for wages" in the general sense. Article 24.8 (b), of course, provides a very special form of relief where there is delay in dealing with wage claims: it requires payment of the claim. Where the express time limits for reply have been passed and there has been no extension, then "the claim will be paid". There is then no scope for any examination into the validity of the claim.

Now there may be extreme circumstances in which an obviously frivolous or even fraudulent attempt to abuse the provisions of the agreement by submitting extravagant demands in the form of a wage claim might be held not to invoke the provisions of Article 24.8 (b). A "wage claim" for some huge amount, ignored by the Company, might not in fact render it liable under that article, or it may be that some other relief would be available. But that is not the instant case, which is a claim to be paid what is asserted (rightly or wrongly) to be the appropriate rate of wages for certain work performed. The parties have negotiated particular provisions of the collective agreement to ensure that such claims are dealt with promptly, failing which they are to be paid. Valid or not, the claim asserted in this case was, as I find, a "claim for unpaid wages" within the meaning of Article 24.8 (b). A decision with respect to that claim was not rendered within the prescribed time limits, and accordingly it must be paid.

The grievance is therefore allowed.

J. F. W. WEATHERILL
ARBITRATOR