CANADlAN RAlLWAY OFFlCE OF ARBITRATION

CASE NO. 568

Heard at Montreal, Wednesday, October 13,1976

Concerning

CANADIAN PACIFlC TRANSPORT COMPANY LlMlTED
(C. P. Transport Western Division)

and

BROTHERHOOD OF RAlLWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATlON EMPLOYEES

EXPARTE

DISPUTE:

Whether or not Mrs. L. Lewis is entitled to maintain and accumulate seniority on the Accounting Department seniority list.

EMPLOYEE'S STATEMENT OF ISSUE:

Mrs. L. Lewis whose seniority date is April 3rd, 1958, was afforded seniority protection from January 4th, 1966, the date she became System Board Secretary - System Board No. 15, representing employees of C.P. Rail and C.P. Transport.

On the date of January 15th, 1974, Mrs. Lewis was advised by letter that approval for extension of leave of absence without pay from January lst, 1974, to December 3lst, 1974, was granted.

On September 12th 1974, a letter over the signature of Mr. C. C. Baker advised the General Chairman that the last authorized leave of absence for Mrs. Lewis expired December 3lst, 1972.

Mrs. Lewis was subsequently granted leave of absence for the year 1975.

By letter dated January l6th, 1976, the Company advised the General Chairman that Mrs. Lewis' leave of absence expired December 31st, 1975 and her record with the Company was now closed.

The Union contend this is in violation of Article 21.8 of the Collective Agreement.

The Company advise that Mrs. Lewis does not come under the scope of the collective agreement. Therefore, the Union request under Article 21.8 of the Agreement cannot be dealt with.

FOR THE EMPLOYEE:

(SGD.) R. WELCH
SENIOR GENERAL CHAIRMAN

There appeared on behalf of the Company:

C. C. Baker	Director, Labour Relations & Personnel,CP Transport, Vancouver

And on behalf of the Brotherhood:

R. Welch	Senior General Chairman, B.R.A.C. Vancouver
D. C. Duquette	General Chairman (Rail) - B.R.A.C., Montreal
R. J. Cranch	National Secretary-Treasurer, B.R A C Montreal

AWARD OF THE ARBITRATOR

The company has raised a preliminary objection to the effect that this matter is not arbitrable, on the grounds that it was not filed in timely fashion, and that the ex parte application was not made on proper notice.

As to the first ground of objection, the union was advised in January, 1975, that the leave of absence which had been granted the grievor would expire at the end of that year. The grievor, it appears, had notice of this condition of leave. Any objection to the imposing of such condition ought to have been raised at that time. It does not necessarily follow, however, that the grievor's employment would terminate automatically if she did not return to work immediately on the expiry of the leave of absence. Some further step was required to be taken by the company in this regard. This would appear to have been done on January 16, 1975, when the company advised the union that the leave of absence had expired and that the grievor's record was closed. There is, surprisingly, nothing in the material before me to show that the grievor herself was directly advised of what was, in effect, the termination of her employment, although it seems she did have advice as to the matter.

The matter was raised as a grievance, it appears, on February 9, 1976. This was twenty-four days after the cause of the grievance, that is the closing of her record, had occurred. Even allowing for any delay in receipt of the company's letter, it is apparent that the fourteen-day time limit for the filing of grievances, set out in article 28 of the collective agreement, was not met. By article 28.3, when a grievance is not progressed by the union within the prescribed time limits, "it shall be considered as dropped". As arbitrator, I have no jurisdiction to alter or amend any of the provisions of the collective agreement. This grievance was not put forward in accordance with the terms of the collective agreement, and accordingly I have no jurisdiction to hear it. It should be added that this is not, in my view, a case relating to any "correction" of a seniority list, and which might be brought within ninety days of the posting of such list, something required to be done by January 15 of each year. There is no question of accuracy of information or of relative standing of employees, or of accidental ommission of a name. It is the grievor's status as an employee which is substantially in issue, and that matter was required to be raised as a grievance within fourteen days.

For the foregoing reasons the grievance must be dismissed.

J.F.W. WEATHERILL
Arbitrator