CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 682

Heard at Toronto, Monday, October 2, 1978

Concerning

CANADIAN NATIONAL RAILWAY

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE: Claims by the company that it is entitled to use road crews in the operation of a train from Atikokan to Neebing via McKellar Island, and that the use of such crews on such operation is not contrary to the definition of yardmen's work contained in article 102.1 of collective agreement 4.3.

There appeared on behalf of the company:

S.T. Cooke, Assistant Vice-President; P. Antymniuk, Counsel, and others

And on behalf of the union: G. McDevitt, Vice-President; J.L. Shields, counsel.

INTERIM RULING OF THE ARBITRATOR

Following the institution of the service referred to in the dispute, certain employees of the company at Thunder Bay, followed later by others at Symington, Melville and Rainy River, withdrew their services, from and after September 14, 1978. As of the date of this hearing, I was advised that employees at Symington, Melville and Rainy River had returned to work.

The stoppage of work, it appears, relates to a position apparently adopted by certain employees to the effect that the company would not be entitled, under the collective agreement, to take the position it has. The company, in an attempt to resolve the matter has, along with other actions, instituted this grievance. The grievance was not submitted in accordance with any grievance procedure established by the collective agreement. Rather, so that the matter may proceed with dispatch, the company seeks to proceed directly to arbitration.

No objection has been taken with respect to the form of the grievance or the by-passing of any grievance procedure.

The company has sought as well to invoke the "ex parte" procedure for proceeding to arbitration in the absence of an agreed Joint Statement of Issue. This procedure is contemplated by article 8 of the Memorandum establishing the Canadian Railway Office of Arbitration. While slightly less than forty-eight hours' notice of intent to proceed in this manner may have been given, the union does not raise any objection in that regard.
From the foregoing it would appear that a grievance has been advanced and that the dispute above set out may proceed in the Canadian Railway Office of Arbitration.

The union does not, however, waive the requirement of compliance with article 5 of the Memorandum establishing the Office of Arbitration. That article relates to the procedure for filing and the times for hearing disputes. By the regular application of this article, the instant dispute would not be heard until, at the earliest, the second Tuesday in November, 1978. The "ex parte" procedure does not relate to the actual hearing of an arbitration on its merits. The arbitrator has no jurisdiction apart from that contained in the collective agreement, the Memorandum and, in a general way, the Canada Labour Code. None of these authorities confers on him any power to waive compliance with their terms or to institute any form of summary procedure.

Thus, in the absence of waiver of the procedural requirements, I cannot proceed in this matter today.

It may, however, be proper to make the following coxm:ents. First, as to the work stoppage, both parties appear to agree that it is contrary to the collective agreement. Certainly the correct procedure to be followed by employees who consider themselves aggrieved would be to resort to the grievance procedure. Second, the union has asserted that the company is in fact entitled to make the assignment it has. In this sense, there may be said to be no real "dispute" between the parties. In these circumstances, it is surely fair to state that the company is, as the parties to the collective agreement are agreed, entitled to use Road Crews in the operation of trains from Atikokan to Neebing via McKellar Island, and that the use of such crews is not contrary to the definition of Yardmen's work contained in article 102.1 of collective agreement 4.3.

Third, I would indicate, without now making a final ruling on the point, that I do not consider that individual employees are, as such, entitled to notice of, or to the right to participate in the hearing of this grievance. It is a matter between the employer and the bargaining agent, as are most grievances, even although it may well have important effects on employees, as do many.

Finally, I would note that I do consider that the grievance does involve a dispute between the parties in the sense that there is a specific claim for relief on which I am asked to rule. There is, as appears from the foregoing, no dispute on the substantial question, on which I have therefore indicated my views. I do not make any formal ruling thereon, for the reasons above set out.

The only correct procedure now to be followed is to adjourn the matter, the employer to advise the Canadian Railway Office of Arbitration in the usual way if the matter is to be proceeded with.

DATED AT TORONTO THIS 2nd DAY OF OCTOBER, 1978.

Arbitrator