CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 686

Heard at Montreal, Tuesday, November 14, 1978

Concerning

ALGOMA CENTRAL RAIIWAY

and

UNITED TRANSPORTATlON UNlON (T)

EXPARTE

DlSPUTE:

The Company not negotiating in good faith on Article 11 of our collective agreement with proper understanding of the words "Oba and Etc.".

EMPLOYEES' STATEMENT OF lSSUE:

During contract negotiations for 1978 contract in formulating Article 11 of our collective agreement, the Company's concern at the time (contract negotiations) was through trains such as trains 5 and 6 and both agreed that Junction Switching for these or such trains would be an arbitrary and established; the exact two points - Franz and Oba in Article 11.

Since the contract has been signed and Article 11 has come into operation, the Company is now interpreting Article 11 in a manner beyond the circumstances which were agreed during our 1978 contract negotiations, which has a great effect on the employees earnings.

The United Transportation Union Local 885 contends the Company has violated Article 110 of our collective agreement and Part V of Canada Labour Code Section 148.

FOR THE EMPLOYEES:

(SGD.) J. SANDIE
GENERAL CHAlRMAN

There appeared on behalf of the Company:

V. E. Hupka - Manager lndustrial Relations, AC Rly., Sault Ste. Marie

N. L Mills - Superintendent Transportation, AC Rly., Sault Ste. Marie

And on behalf of the Brotherhood:

J. Sandie - General Chairman, U.T.U.(T) - Sault Ste. Marie

AWARD OF THE ARBlTRATOR

In this grievance the Union alleges that the Company, by reason of the interpretation which it advances in a matter involving the possible application of Article 11 of the collective agreement, is in violation of Article 110 of the agreement and of Section 148 of the Canada Labour Code.

Article 11 of the collective agreement deals with overtime in freight service. lt provides, among other things, that time paid for arbitraries -and certain examples are given - is not to be included in computing overtime. ln effect (and the matter is dealt with in Case No.687), the Company is treating a particular situation as coming within the examples given of "arbitraries". The Union considers that the Company's position is wrong, and is at odds with what was agreed to in the course of negotiations with respect to Article 11.

Whether or not the Company's position with respect to the application of Article 11 is correct or incorrect is a matter which will be determined in Case No.687. In the instant case, it is the fact of the Company's taking such a position which the Union asserts to be in violation of the collective agreement, and an offence under the Canada Labour Code. I shall deal with these two matters in turn.

Article 110 of the collective agreement calls for the adjustment between the proper officers of the parties of questions of interpretation. Officers of the railway may not, without prior discussion with the General Chairman, make rulings "changing any generally accepted interpretation of any article or rule of this schedule". ln the instant case there does not appear to have been any such "ruling". If there had been, it would be a nullity, not having been made in compliance with Article 110. What there has been is an application of a provision of the collective agreement in a particular case, and the Union considers that application to be incorrect. It has been challenged in the proper way, and will be decided in the proper case. There has, however, been no violation of Article 110 as such, which has no real application to these circumstances.

As to the Canada Labour Code, it does indeed require that there be bargaining in good faith. In the instant case there was bargaining, and there is now a collective agreement. The jurisdiction of the arbitrator arises under the collective agreement, and not under the Code. An arbitrator may determine the question whether or not there has been a violation of the collective agreement in specific circumstances, but he has no jurisdiction to decide whether or not there has been an offence under the Canada Labour Code.

In the instant case, what is alleged does not constitute a violation of the collective agreement. The grievance, therefore, must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR