CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 836

Heard at Montreal, Tuesday, June 9, 1981

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

The dismissal of Trainperson C.G. Llewellyn, Schreiber, Ontario, from CP Rail's Service, effective July 25, 1980.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) L.H. BREEN GENERAL CHAIRMAN	(SGD.) J.P. KELSALL GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company:

L.A. Clarke -- Supervisor, Labour Relations, CP Rail, Toronto
B.P. Scott -- Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

L.H. Breen -- General Chairman, UTU, Toronto
B. Marcolini -- Vice-General Chairman, UTU, Toronto
J.R. Austin -- Secretary of the General Committee of Adjustment, UTU, Toronto

AWARD OF THE ARBITRATOR

Ms. Llewellyn entered service with the Company as a Trainperson on March 22, 1980. She was laid off on April 28th and recalled to work on June 3rd. Her service was terminated on July 25, 1980. The substance of this grievance is that there was not just cause for the termination of the grievor's employment.

The Company has raised the preliminary objection that this matter is not arbitrable, and the parties' representations at the hearing were directed to that quest:on, which is the only matter decided by this award.

Article 39(b) of the Collective Agreement provides generally for a

procedu for the resolution of grievances "concerning the meaning or alleged violation of any one or more of the provisions of this Collective Agreement". Article 39(c) sets out the procedure for "an appeal against discipline imposed". In each case, grievances not resolved in the course of the grievance procedure may be submitted, subject to certain time limits, to the Canadian Railway Office of Arbitration for final and binding settlement. The Collective Agreement does not appear to restrict any employee or group of employees from presenting grievances relating to matters which may be the subject of grievance under Article 39.

It is clear that the grievor was, at the time of the termination of her employment, a probationary employee, in that she was not "permanently employed having had less than six months' service. That is the effect of Article 37(d) of the Collective Agreement, which is as follows:

> "A new Brakeman shall not be regarded as permanently employed until after 6 months service (that is, six months from date of making first pay trip) and, if retained, shall then rank on the master seniority list from the date and time he commenced his first pay trip. In the meantime, unless removed for cause, which, in the opinion of the Company renders him undesirable for its service, the Brakeman shall be regarded as coming with the terms of this Collective Agreement."

The Company contends that because the grievor was removed from service for cause, none of the Collective Agreement provisions, including the grievanc= and arbitration provisions, are applicable in her case. I am unable to accept this contention. While the grievor is indeed a probationary employee, and while the Company will have the right to determine whether or not she becomes a permanent employee (by exercising or not exercising the right of removal for cause), nothing in the Collective Agreement deprives her of the general right, conferred on all employees, to invoke the grievance and arbitration procedures. The matter is, therefore, arbitrable.

It should be added, however, that the question to be arbitrated is a very narrow one. It is not, as it would be in the case of a permanent employee, a question of whether or not there was "just" or "proper" cause for the termination of the grievor's employment. Rather (as is no doubt to be expected in the case of a probationer), the issue to be arbitrated would be whether or not there was cause "which, in the opinion of the Company, renders (the employee) undesirable for its service". Such a provision would appear to give the employer a broad discretion with respect to the continuance of probationary employees in its service. However that may be, there is a question, however narrow, which may be submitted to arbitration.

It is therefore my conclusion that the matter is arbitrable. It will be listed for hearing at a subsequent date. It may be observed that the considerations which would go to the merits of the issue would appear to have been canvassed in the presentations made on the question of arbitrability.

J.F.W. Weatherill,
Arbitrator.