CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 837

Heard at Montreal, Tuesday, June 9, 1981

Concerning

CANADIAN PACIFIC TRANSPORT COMPANY LIMITED
(CP TRANSPORT - WESTERN DIVISION)

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

EX PARTE

DISPUTE:

Claim of Mr. E. Coelho for the difference in rate of pay between sick leave and bereavement leave September 25th, 26th and 27th, 1980, inclusive.

EMPLOYEES' STATEMENT OF ISSUE:

A member of Mr. Coelho's family died. Mr. Coelho was receiving sick benefits during the time he would be entitled to bereavement leave. The Union claim that Mr. Coelho did suffer loss of earnings during September 25th, 26th and 27th, 1980.

The Company declined the claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) R. WELCH SYSTEM GENERAL CHAIRMAN	(SGD.) N.W. FOSBERY DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

N.W. Fosbery -- Director Labour Relations, CP Transport, Toronto

And on behalf of the Brotherhood:

P.L. Rouillard -- Vice-General Chairman, BRAC, Vancouver
M. Krystofiak -- Vice-General Chairman, BRAC, Calgary

AWARD OF THE ARBITRATOR

The Company has raised the preliminary objection that this matter is

not arbitrable, in that the time limits set out with respect to Step 3 of the grievance procedure were not met. It is acknowledged that the grievance procedure provisions were met up to that point.

Step 3 of Article 17-B-1 of the Collective Agreement is as follows:

> "STEP 3
>
> If the grievance is not settled at Step 2, the General Chairman may appeal the decision in writing, giving his reasons for the appeal, to the highest officer designated by the Company to handle grievances, within 35 calendar days following receipt by the Union of the decision in Step 2. Such officer will render a decision in writing, giving his reason for the decision, within 35 calendar days following receipt of the appeal."

Reference may also be made to Article 17-B-3, which is as follows:

> "When a grievance is not progressed by the Union within the prescribed time limits, it shall be considered as dropped. When the appropriate officer of the Company fails to render a decision within the prescribed time limits, the grievance may be progressed to the next step within the prescribed time limits based on the last date such decision was due, except as otherwise provided in Clause 17-B-4."

In the instant case, the Company's decision at Step 2, set out in a letter dated October 24, 1980, was received by the Union on October 27, 1980. The Union then had 35 calendar days in which to appeal that decision. That period, which should be regarded as one of clear calendar days, expired at midnight on December 1, 1980. As of that date, the Company had not received any notice of appeal in the matter. In subsequent correspondence, he Union advised that the grievance was "written up" at Step 3 on December lst, but it was mailed to the Company by letter postmarked December 3rd, and would appear to have been received sometime after that. There was, I find, no communication to the Company of the Union's intention to proceed to the next step within the prescribed time limits.

In my view, the provisions for the making of an appeal (whether or ot it must be in writing, and whether or not reasons for it are to be given) is a provision for the communication of such appeal to the other side. The "appeal" is not made when the party seeking to appeal makes its decision o appeal, or drafts a letter, but is made when it is communicated to the other party. Under this Collective Agreement of course, the form and nature of the communication are spelled out, as is the time within which such communication must be made. That the provisions with respect to time limits are mandatory and not directory is clear from Article 17-B-3 which provides that a grievance not progressed by the Union within the prescribed time limits "shall be regarded as dropped". The same Article, it may be noted, goes on to prescribe what rights the Union has where a decision is not "rendered" by the Company within the prescribed time limits.

By Article 17-B-5, time limits may be extended by mutual agreement. There has been no such agreement in the instant case. The jurisdiction of the Arbitrator, under the Memorandum establishing the Canadian Railway Office of Arbitration, is conditioned upon the submission of the dispute "in strict compliance" with the terms of the Memorandum, and by the terms of the Memorandum the Arbitrator may not add to, subtract from, modify, rescind or disregard any provisions of the applicable Collective Agreement. Finally, it may be noted that Section 157(b) of the Canada Labour Code confers on an Arbitrator certain of the powers conferred on the Canada Labour Relations Board, namely those referred to in Section 118(a), (b) and (c) of the Code (relating to the summoning of witnesses, administration of oaths and the receipt of evidence), but it does not confer the power set out in Section 118(m) of the Code, relating to the abridgement or enlargement of time.

For the foregoing reasons, it is my conclusion that the time limits in question were not met, that I have no power to relieve against the consequences of that and that the grievance must be considered as dropped. It is accordingly my award that the grievance is not arbitrable, and these proceedings are terminated.

J.F.W. Weatherill,
Arbitrator.