CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 844

Heard at Montreal, Tuesday, June 9, 1981

Concerning

CANADIAN PACIFIC EXPRESS LIMITED

and

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

DISPUTE:

The cancellation of linehaul run between Sault Ste. Marie and Thunder Bay, Ontario, and contracted out the work to a broker.

EMPLOYEES' STATEMENT OF ISSUE:

In the latter part of August 1980, a linehaul run between Sault Ste. Marie and Thunder Bay, Ontario, was cancelled and the work transferred to a private contractor.

The Brotherhood grieved the unilateral move on the grounds that the work is defined in Article 1.1, therefore, comes under the scope of our Agreement, and requested the position be reinstated immediately.

The Company refused the request.

FOR THE EMPLOYEES:

(SGD.) J.J. BOYCE
GENERAL CHAIRMAN

There appeared on behalf of the Company:

D.R. Smith -- Director, Industrial Relations, Personnel and Administration, CP Express, Toronto

B.D. Neill -- Manager, Labour Relations, CP Express, Toronto

R.A. Colquhoun -- Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

J.J. Boyce -- General Chairman, BRAC, Toronto

F.W. McNeely -- General Secretary-Treasurer, BRAC, Toronto
J. Crabb -- Vice-General Chairman, BRAC, Toronto

AWARD OF THE ARBITRATOR

This grievance relates to the "contracting out" of certain work by the employer, alleged to be in violation of the Collective Agreement. The employer raises the preliminary objection that the matter is not arbitrable in that the several steps of the grievance procedure provided for in the Collective Agreement were not followed.

Article 9.1 of the Collective Agreement is as follows:

"Disputes in respect to the meaning, interpretation of alleged violations of the terms of this Agreement, or when an employee claims that he has been unjustly dealt with in respect thereof and he is unable to obtain satisfactory explanation directly, may be dealt with in the following manner;

STEP 1 The aggrieved employee or the Local Chairman shall present the grievance in writing to the employee's immediate supervisor within 14 calendar days following the cause of the grievance. Such supervisor will render a decision in writing 14 calendar days following receipt of the written grievance.

STEP 2 If the grievance is not settle at Step 1 the Vice-General Chairman may appeal the decision in writing, giving his reasons for the appeal, to the officer designated by the Company, within 28 calendar days following receipt of the decision rendered in Step 1. Such Company officer will render a decision in writing, giving his reasons for the decision, within 28 calendar days following receipt of the appeal.

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 42 calendar days following receipt by the Union of the decision in Step 2. Such officer will render a decision in writing, giving his reasons for the decision, within 42 calendar days following receipt of the appeal.

STEP 4 If the grievance is not settled at Step 3, it may then be referred by either party to the Canadian Railway Office of Arbitration for final and binding settlement without stoppage of work in accordance with the rules and procedures of that office. The party requesting arbitration must notify the other

> party in writing within 42 calendar days following receipt of the decision in Step 3, or the due date of such decision if not received."

In the instant case, the grievance relating to the contracting out appears to have been instituted at Step 3, by letter from the General Chairman to the Company's Director of Industrial Relations, Personnel and Administration.

The grievance is, in effect, a "Union" or "policy" grievance. It is not the claim of an employee that he has been unjustly dealt with, and it seems clear that it is not the sort of matter to which the procedure called for in steps 1 and 2 of the grievance procedure would be apt. Those steps contemplate individual and not "policy" grievances.

Further, it has been the case that discussions have been held between the parties with respect to the operations in question, although not with respect to the contracting out in particular. These discussions have been held at the level of the General Chairman of the Union and the Director of Industrial Relations, Personnel and Administration of the Company. That would seem to be entirely appropriate and would, in a general way, justify the Union's originating a grievance in this matter at that level.

The Collective Agreement is silent with respect to "policy" grievances, setting out a detailed procedure only with respect to "employee" grievances. The Canada Labour Code, however, requires by Section 155(1) that the Collective Agreement contain a provision for final settlement "by arbitration or otherwise" of all differences "between the parties to or employees bound by" the Collective Agreement. By Section 155(2) of the Code, where the Collective Agreement does not contain such a provision, the difference is nevertheless to be submitted to arbitration.

In the instant case, the grievance procedure set out in the Collective Agreement would appear to be only in partial compliance with the requirements of the Code, in that there is provision for settlement of differences involving employees but not (at least not explicitly) for that of differences between the parties themselves. The parties have, however, provided for arbitration. In the case before me it seems clear that there is a difference between the parties bound by the Collective Agreement concerning its interpretation, application, administration or alleged violation. Such a difference is, under the Code, subject to arbitration. Absent specific procedural provisions relating to differences between the parties, the appropriate course, if discussion prior to arbitration is sought, is surely to proceed at the appropriate level of the existing grievance procedure, as the Union has done. That such a procedure is appropriate is demonstrated by the course of dealing between the parties on such matters.

Since the grievance procedure steps which were not followed in this case are steps which were not applicable to it, it cannot be concluded that there has been a failure to observe any applicable

rules of procedure. The matter is of a sort which is contemplated by the Canada Labour Code as one subject to arbitration; the arbitrator "selected by the parties" is, in the instant case, the arbitrator of the Canadian Railway Office of Arbitration.

For the foregoing reasons, it is my conclusion that the matter is arbitrable, and it is directed that it be listed for hearing on the merits.

J.F.W. Weatherill,
Arbitrator.