

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 848

Heard at Montreal, Tuesday, July 14, 1981

Concerning

ONTARIO NORTHLAND TRANSPORTATION COMMISSION

and

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

DISPUTE:

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Discipline assessed against Operator S.D. Baker of 10 demerit marks for work performance resulting in ticket discrepancies and failure to settle same and 20 demerit marks and time out of service to count as suspension for irregularities with reference to failure to protect and remit monies collected.

JOINT STATEMENT OF ISSUE:

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On August 22, 1980, Operator S.D. Baker, at Timmins, Ontario, was suspended from service for investigation because of an accumulation of incidents. He was subsequently investigated for three separate matters:

- (1) The issuing of tickets without charging for them.
- (2) The matter of the number of ticket discrepancies and non-settlement of shortages.
- (3) The irregularities in connection with failure to report and remit monies collected.

Mr. Baker was assessed discipline in all three matters. The union appealed the discipline assessed in the two latter matters requesting that the 30 demerit marks be removed from his record and that he be paid for the 7 days loss in pay due to suspension, and, also that he be reimbursed all monies paid by, or deducted from him, for the ticket discrepancies.

The company denied the appeal.

FOR THE EMPLOYEES:

(SGD.) S.C. RUTTAN  
GENERAL CHAIRMAN

FOR THE EMPLOYEES:

(SGD.) R.O. BEATTY  
GENERAL MANAGER

There appeared on behalf of the Company:

A. Rotondo -- Manager Labour Relations, ONTC, North Bay

J.H. Singleton -- Manager Passenger Services, ONTC, North Bay  
And on behalf of the Brotherhood:

S.C. Ruttan      -- General Chairman, BRAC, Porquis, Ont.  
R.C. Smith      -- National Vice-President, BRAC, Montreal

AWARD OF THE ARBITRATOR  
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The Company has raised a preliminary objection to the arbitrability of this matter, saying that it was not referred to arbitration in the proper manner.

There is no suggestion that the matter was not properly processed through the grievance procedure set out in Article 21 of the Collective Agreement. The answer at the last step of the grievance procedure appears to have been given on November 24, 1980. It was then open to the Union to submit the matter to the Canadian Railway Office of Arbitration within 60 days.

On January 20, 1981, the Union wrote to the Company with a request that the matter be referred to arbitration. This was within the time limits provided, and under many Collective Agreements would constitute a proper notice of referral to arbitration.

Under the memorandum establishing the Canadian Railway Office of Arbitration, however, a request for arbitration is to be made, not simply by notice to the other party, but rather by filing notice with the Office of Arbitration (and with a copy to the other party). No notice of the sort contemplated by Clause 5 of the memorandum was filed within the time limits.

The arbitrator's jurisdiction is "conditioned always upon the submission of the dispute to the Office of Arbitration in strict accordance with the terms" of the memorandum. The instant dispute was not in fact submitted in strict accordance with those terms. The matter, therefore, is not arbitrable and the grievance must accordingly be dismissed.

J.F.W. Weatherill,  
Arbitrator.