CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1064

Heard at Montreal, Tuesday, April 12th, 1983

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Dispute between Canadian Pacific Limited and the Brotherhood of Locomotive Engineers with respect to the discontinuance of the Medicare Allowance to employees located in the Province of Manitoba.

JOINT STATEMENT OF FACT:

(1) Each of the signatories to this Joint Statement of Fact and Issue are party to a Collective Agreement containing provision for the payment of a Medicare Allowance, such provision attached as Appendix "A" hereto.

(2) On July 1, 1982, the legislature of the Province of Manitoba enacted The Health and Post Secondary Education Tax Levy Act.

JOINT STATEMENT OF ISSUE:

It is the contention of the Railway that the tax levied by the aforementioned Act constitutes an amount the Railway is required to pay for medical-surgical benefits under a government medicare plan pursuant to the provisions of Appendix "A" hereto and, therefore, the medical allowance must first be used to pay the amount pursuant to the legislation that the railway is required to pay.

It is the contention of the Union that the tax levied does not constitute an amount that the railway is required to pay for medical-surgical benefits under any government medical care plan and, therefore, the employees should continue to receive the full medicare allowance retroactive to the date of its discontinuance.

FOR THE UNION:

(SGD.) JOHN B. ADAIR
FOR General Chairman,
Brotherhood of Locomotive Engineers,
Priarie and Pacific Regions.

FOR THE RAILWAY:

(SGD.) J. T. SPARROW
FOR General Manager,
Operation &
Maintenance
CP Rail, Prairie
Region

APPENDIX "A"

MEDICARE ALLOWANCE

Section 2

(a) Each engineer who is assigned to the engineers' working list on the tenth day of the calendar month will be provided in respect of that month an allowance to be applied against payments provided for under any government medicalcare programme.

(b) The allowance will be $5.50 for single e?gineers and $11.50 for married engineers. The allowance, however, will first be used to pay any amount the Company is, or might be in the future, required to pay for basic medical-surgical benefits under any government medical care plan.

(c) If no monthly amount is payable or if the monthly amount payable or to be payable by an engineer, or by an engineer and the Company, account basic medical-surgical benefits, is less than the allowance, the difference will be paid to the engineer on the payroll and if the monthly amount is greater the difference will be deducted from the engineers' wages.

(d) Subject to the provisions of paragraphs (a), (b), (c), the allowance will be made in respect of each engineer provided he performs compensated service during the months for which the allowance is made.

(e) Notwithstanding the provisions of paragraph (d), an engineer who does not perform service in any calendar month but who is in receipt of a weekly indemnity payment under the provisions of the Benefit Plan for Train and Engine Service Employees will be treated as follows:

(i) if he is resident in a province where a medicare premium or medicare tax is payable, he will be eligible for the amount of such premium or tax up to the maximum amount stipulated in paragraph (b), or such lesser amount as is required to pay the premium or tax in such province.

(ii) If he is resident in a province where no premium or medicare tax is required, no payment will be made.

(f) The monthly allowance will be paid bi :weekly in the amount of $2.53 each pay period in respect of single engineers and $5.29 each pay period in respect of married engineers.

(g) The application of this section shall not result in a duplicate payment consequent upon the inclusion of a medicare allowance provision in any other agreement.

There appeared on behalf of the Company:

W. J. Wysocky - Counsel, Montreal

R. Colosimo - Vice-President, Industrial Relations, CPR, Montreal
D. V. Brazier - Assistant Vice-President, Industrial Relations, CPR, Montreal
J. A. McGuire - Director, Employee Relations, CPR, Montreal
J. T. Sparrow - Manager, Labour Relations, CPR, Montreal
I. J. Waddell - Manager, Labour Relations, CPR, Montreal
M. M. Yorston - Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

Maurice W. Wright, QC - Counsel, Ottawa
John B. Adair - Vice-President, BLE, Ottawa
J. P. Riccucci - Special Representative, BLE, Montreal
R. T. O'Brien - Vice-President, UTU, Ottawa
R. C. Smith - National Vice-President, BRAC, Ottawa
F. L. Stoppler - Vice-President, BMWE, Ottawa
Tom McGrath - National Vice-President, CBRT&GW, Ottawa
Wm. H. Matthew - Regional Vice-President, CBRT&GW, Winnipeg

AWARD OF THE ARBITRATOR

The issue in this case, and the positions of the parties, are very succinctly put in the Joint Statement. In particular, the question to be determined is: is the tax payable by the Company under The Health and Post Secondary Education Tax Levy Act of Manitoba an amount the Company is "required to pay for basic medical-surgical benefits under any government medical careplan" within the meaning of Section 2(b) of the "medicare allowance" provisions set out in Appendix "A to the Joint Statement? It may be noted that that provision is identical (in this respect), to Article 27 (2) (b) of the Collective Agreement between the particular parties to this case.

The Health and Post Secondary Education Tax Levy Act, S.M. 1982, C. 40 requires every employer to pay, for every month after the Act came into force, a tax equal to 1.5% of the remuneration paid that month to or on behalf of its employees. The proceeds of the tax are to be paid into the Consolidated Fund and are to be credited to a special account. That account, however, would appear to be simply a separate account of moneys received and refunds made under the Act, and it does not appear to be "earmarked" in any way to be disbursed for any particular purpose. The tax so levied simply forms part of the government's general revenues.

There is no need, for the purposes of this case, to have regard to the title of the Act as an aid to the interpretation of any of its provisions. The case before me is of course not one of the application of the Act, but rather involves the matter of its characterization, for the purpose of applying the provisions of the Collective Agreement. For that purpose, I think that regard may properly be had to the title of the Act.

The title tells us that the Act is one respecting a "Health and Post Secondary Education Tax Levy", and a survey of the provisions of the statute show that it is precisely what it purports to be. It is a statute imposing a tax levy. While the provisions of the statute itself shed no light on the matter, the title suggests, and the

statements made in the Legislative Assembly at the time show that the tax on remuneration was considered by the government to be preferable to some other method of increasing revenues, and that the need for such increased revenues was felt particularly in the areas of health care and post-secondary education. The need for funds in those areas, was, I think it is fair to say, the fundamental motivation behind the legislati It does not follow from that that the tax imposed under the Act is an amount employers are "required to pay for basic medical-surgical benefits under any government medical careplan".

In my view, The Health and Post Secondary Education Tax Levy Act cannot be described as a "medical care plan". It is not a "plan" in any accepted sense - it is a taxing statute - and it does not provide for medical care, except in the extremely vague sense that it raises funds some of which will presumably go towards the provision of medical care. Certainly the Act makes no mention of "basic medical-surgical benefits", and nothing in the statute, not even its title, could be read as suggesting that any amount this employer might be required to pay under the Act was for "basic medical-surgical benefits". It may also be noted that nothing in the Act deals with the extent to which revenues raised thereunder would be apportioned towards "Health" (whether or not in aid of a medical care plan), or "Post Secondary Education", and indeed the Act does not itself require that any disbursements from the Consolidated Fund be made, nor does it set out limitations on the purposes for which payments may be made from the Fund.

It may be that if the funds so raised are used in substantial part to fund a government medical care plan, and in particular to finance basic medical-surgical benefits, then an inequitable situation will have arisen for this employer, who, having regard to the medical care allowance being paid to employees may be considered as paying for medicare benefits more than once. That issue, however, is not before me. The issue before me is one of interpretation of the precise - and they are quite precise - provisions of the Collective Agreement. Are the payments made by the Company pursuant to The Health and Post Secondary Education Tax Levy Act, S. M. 1982, c.40 amounts which the Company is "required to pay for basic medical-surgical benefits under any government medical care plan", within the meaning of Article 27 (2) (b) of the Collective Agreement. No, in my view, they are not.

For the foregoing reasons it is my conclusion that the Company was not entitled to discontinue payment of the Medicare Allowance to employees located in the Province of Manitoba. The grievance is allowed.

J. F. W. WEATHERILL,
ARBITRATOR.