

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1189

Heard at Montreal, Wednesday, February 15, 1984

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)  
(Prairie Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

The Union contends that the Company violated Section 23.3, Wage Agreement 41 in not providing suitable quarters for sleeping and eating at Perdue, Sask. for Trackman Mr. R. Way and being asked to vacate the living quarters he was using.

EMPLOYEES' STATEMENT OF ISSUE:

Mr. R. Way be reimbursed expenses incurred for alternate accommodation from February 13, 1983, onward, until suitable quarters supplied by the Company.

FOR THE BROTHERHOOD:

(SGD.) H. J. THIESSEN  
System Federation  
General Chairman.

There appeared on behalf of the Company:

R. D. Falzarano - Asst. Supervisor Labour Relations, CPR,  
Winnipeg  
R. A. Colquhoun - Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen - System Federation General Chairman, BMWE,  
Ottawa  
L. DiMassimo - Federation General Chairman, BMWE, Montreal  
R. Gaudreau - Vice-President, BMWE, Ottawa  
E. J. Smith - General Chairman, BMWE, London

AWARD OF THE ARBITRATOR

The company has challenged the arbitrability of the trade union's grievance for its failure to comply with the appropriate time limits for reference of the said grievance at the fourth level of the grievance procedure.

As I understood the evidence when Mr. R. D. Falzarano, Assistant Supervisor, Labour Relations, received the grievance at the fourth level (incidentally within the required time limit) he objected to its lack of specific information upon which he could base a response. He requested particulars of General Chairman W. H. Olson for the purpose of enabling the employer to deal with the grievance. Mr. Olson agreed to comply with that request. He also wrote Mr. Falzarano on June 25, 1983, a letter requesting an extension of the time limits under Step IV of the grievance procedure. More particularly he stated "...I would assume that you are in agreement to extend the time limits on this Step IV to July 31, 1983, under the provisions of Clause 18.11".

Mr. Falzarano complied with Mr. Olson's request and extended the time limits to July 31, 1983. In due course Mr. Olson failed to meet that deadline and by letter dated August 8, 1983, requested an extension of the time limits to September 6, 1983. That request was rejected. Article 18.9 of the collective agreement reads:

"18.9 A grievance not progressed within the time limits specified shall be considered settled on the basis of the last decision and shall not be subject to further appeal. Where a decision is not rendered by the appropriate officer of the Company within the time limits specified, the grievance may be progressed to the next step in the grievance procedure, except as otherwise provided in Clause 18.10."

Whether I would have treated the grievance as "timely" when it was initially presented to Mr. Falzarano at Level IV of the grievance procedure became an academic consideration in light of Mr. Olson's reply to the employer's request for information. The employer's representatives and the trade union both viewed the grievance as unperfected at the time of its initial presentation at Level IV. Mr. Olson undertook to comply with the time limit for the presentation of the requested information in order that the "grievance" be treated as such at that level. He failed to comply with that time limit and must accordingly accept full responsibility for that lapse. The employee in light of Article 18.9 of the collective agreement was thereby entitled to treat "the grievance" as settled in accordance with its reply at Level 3 of the grievance procedure.

For purposes of clarity had parties not treated the employee's request for information as an unperfected grievance at Level IV of the grievance procedure then a different conclusion may very well have resulted.

For the foregoing reasons, this grievance is not arbitrable.

DAVID H. KATES,  
ARBITRATOR