

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1192

Heard at Montreal, Wednesday, February 15, 1984
Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Pacific Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
EX PARTE

DISPUTE:

Mr. S. S. Brighton, Welder, Revelstoke, received the 3 - 4 year rate of pay as of December 4, 1981, and was entitled to the 4 or more year rate of pay for Welder from January 17, 1983, and onward.

EMPLOYEES' STATEMENT OF ISSUE:

The Union contends that he be paid for all his time involved since January 17, 1983, at the 4 or more year rate of pay in accordance with Section 26.1.1 (D) Wage Agreement 41. FOR THE

FOR THE BROTHERHOOD:

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

There appeared on behalf of the Company:

F. R. Shreenan	- Supervisor Labour Relations, CPR, Vancouver
D. N. McFarlane	- Asst. Supervisor Labour Relations, CPR, Vancouver
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

INTERIM AWARD OF THE ARBITRATOR

In April, 1983, the grievor, Mr. S. S. Brighton, initiated a "timely" grievance challenging the rate of pay he received as a Welder pursuant to Article 26.1 of the collective agreement. The employer rejected the grievance at the first level and the grievor advised that he intended to proceed to the second level. Apparently the appropriate trade union representative was not involved in the reference of the grievance at the second level. The company eventually took the position when the trade union representative became involved that the reference at the second level was "untimely". It is common ground that the trade union accepted that position.

In response to the employer's treatment of the grievor's first grievance at the second level, General Chairman V. Dolynchuk wrote the employer on July 23, 1983:

"This was an on-going grievance and due to not being progressed properly, is being started again at Step 1."

The company has objected to the timeliness of the second grievance alleging that the initial grievance had been resolved and was final and binding on the parties. Moreover, the company challenged "the stop and start again" tactic of the trade union's representative. It was accordingly argued that I was without jurisdiction to entertain the second grievance that was described as essentially the same grievance that was settled at the first level of the grievance procedure.

In resolving this dispute, I adopt the trade union's submissions. The complaint alleged by the grievor involves an allegation of a continuous or "ongoing" violation by the employer of the pay provisions of the collective agreement. Each day the grievor is alleged to have been paid at the improper rate, in a real sense, may give rise to separate and fresh grievances. Accordingly, the grievance referred anew by the trade union, once it learned of the employer's position with respect to first grievance, was a proper and "timely" grievance. Accordingly the second grievance before me is arbitrable.

It may very well be, should the grievor succeed on the merits at arbitration, an issue of the quantum of compensation may arise as a result of the abortive first grievance. I would prefer to delay dealing with that issue until the grievance is heard on its merits.

For present purposes the grievance is arbitrable and ought to be listed for hearing.

DAVID H. KATES,
ARBITRATOR.

On March 21st, 1984, the trade union advised the General Secretary of the Canadian Railway Office of Arbitration of the settlement of the above grievance and has asked for leave to withdraw the said grievance.

Leave to withdraw is hereby granted.

DAVID H. KATES,
ARBITRATOR.