CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1218

Heard at Montreal, Thursday, March 8, 1984
Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

AND

(RCTC) RAIL CANADA TRAFFIC CONTROLLERS

EX PARTE

DISPUTE:

The participation of the R.C.T.C. in the C.R.0.A.

COMPANY'S STATEMENT OF FACT:

Under date of June 29, 1983, the Rail Canada Traffic Controllers gave notice in accordance with Section 20 of the Memorandum of Agreement establishing the Canadian Railway Office of Arbitration to the other parties signatory thereto and to the General Secretary of its intention to withdraw from the C.R.0.A. effective August 31, 1983.

Article 38.06.04 of the Current Collective Agreement between the parties provides that grievances not settled at Step 3 of the grievance procedure may be referred by either party to the C.R.0.A. for final and binding settlement.

COMPANY'S STATEMENT OF ISSUE:

It is the position of the Company that this contractual commitment requires that both parties comply with the C.R.0.A. Memorandum of Agreement in order to ensure that the procedure for final and binding settlement of disputes is preserved. The Company contends that the R.C.T.C. is bound by the terms of the Collective Agreement to maintain, in good standing, the membership with the C.R.0.A. and that, therefore, withdrawal from the C.R.0.A. can only take place with the concurrence of both parties to the Collective Agreement.

FOR THE COMPANY:

(SGD.) J. T. SPARROW
Manager, Labour Relations
CP Rail
Montreal, Quebec

There appeared on behalf of the Company:

D. V. Brazier	- Assistant Vice-President, Industrial Relations, CPR, Montreal
J. W. McColgan	- Labour Relations Officer, CPR, Montreal

And on behalf of the Union:

D. H. Arnold - System Chairman, RCTC, Winnipeg
E. J. Yerex - National Chairman, RCTC, Winnipeg

AWARD OF THE ARBITRATOR

Pursuant to Article 20 of the Memorandum of Agreement dated September 11, 1971, between the signatories establishing the Canadian Railway Office of Arbitration the Rail Canada Traffic Controllers (RCTC) notified the General Secretary of the CROA, by letter dated June 29, 1983, of its intention to withdraw from the CROA effective August 31, 1983.

This is an Ex Parte application filed by the company for a declaration that the RCTC still remains bound, despite its efforts to withdraw, to refer its unsettled grievances to the CROA once the grievance procedure under the prevailing collective agreement has been spent. To date there are several unsettled grievances between the parties awaiting referral to arbitration. In support of its position the company has relied upon Article 38.06.04 of the collective agreement which reads as follows:

> "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 twenty-eight calendar days following receipt of the decision in Step 3, or the due date of such decision, if not received. A request for arbitration must be filed with the Canadian Railway Office of Arbitration within 120 calendar days of the date one party notified the other of the intention to proceed to arbitration with the grievance."

The RCTC has challenged the jurisdiction of the present arbitrator appointed pursuant to the Rules and Procedures of the CROA to determine the issue of whether it is bound to refer its grievances to the CROA for final disposition. In any event, the RCTC has taken the position that it is no longer bound by the Memorandum of Agreement governing the arbitrability of grievances affecting the participants in the CROA in light of its letter of withdrawal from the organization.

The background facts precipitating this dispute are not challenged. The RCTC became the successor trade union representative of a unit of employees known as "telegraphers" upon its certification by the C.L.R.B. on September 4, 1981. The predecessor trade union (BRAC) was a signatory to the Memorandum of Agreement establishing the C.R.0.A. as the ultimate arbitral authority for unsettled grievances. BRAC was also the signatory to a collective agreement with the company containing Article 38.06.04 that provided for the referral of

unsettled grievances "to the C.R.0.A. for final and binding settlement...in accordance with the rules and procedures of that Office".

Despite the efforts of the RCTC to change the prevailing procedures for the arbitration of unsettled grievances at the parties' last set of negotiations these efforts proved unsuccessful. In due course a renewed collective agreement was entered into containing the same Article 38.06.04 and the requirement that either party refer unsettled grievances to the CROA "in accordance with the rules and procedures of that office".

I am satisfied that notwithstanding the RCTC's letter of withdrawal from the CROA it was still bound by operation of Article 38.06.04 of the collective agreement to submit, as it deemed fit, unsettled grievances "for final and binding settlement" to the CROA. I do not hold, in light of its letter of withdrawal, that the RCTC need necessarily retain "membership" in the CROA and participate in the business affairs of that organization. But so long as the collective agreement dictates the procedure for the resolution of unsettled grievances by recourse to the CROA then the RCTC still remains bound to adhere to the provisions of its own agreement. That is to say, the RCTC must continue to refer its unsettled grievances to the CROA as prescribed by Article 38.06.04 "in accordance with the rules and procedures of that Office".

Insofar as the RCTC's challenge to this arbitrator's jurisdiction to determine the issues placed before me is concerned, I am satisfied that both the arbitration procedures governing the CROA and the relevant provisions of The Canada Labour Code Part V confer that authority. What I have been told (and there is not dispute here) is that several unsettled grievances between the parties are awaiting referral to arbitration. The RCTC is resisting the referral of these grievances "in accordance with the rules and procedures" of the CROA. In this regard, the Arbitrator appointed by the CROA is seized of the jurisdiction to determine disputes pursuant to Article 4(A) of the Memorandum of Agreement "respecting the meaning or alleged violation of any one or more of the provisions of a valid subsisting collective agreement....". Moreover, paragraph C of Section 157 of The Canada Labour Code empowers a properly seized arbitrator to determine whether the grievances referred to the CROA are properly "arbitrable". This is exactly the jurisdiction I have purported to exercise in this particular situation.

In the result I have determined pursuant to Article 38.06.04 of the collective agreement that the RCTC still remains bound by the provisions of "the rules and procedures" of the CROA with respect to the "arbitrability" of unsettled grievances. In short, I can discern no restriction to my jurisdiction, provided my interpretation is correct, in defining the mutual obligations of the parties with respect to the procedures for the arbitration of their outstanding grievance disputes as contained in the subsisting collective agreement.

DAVID H. KATES,
ARBITRATOR.