

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1273

Heard at Montreal, Tuesday, September 11, 1984

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

AND

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE AND BROTHERHOOD'S STATEMENT OF ISSUE:

The Union, Brotherhood of Maintenance of Way Employees, contends that the Company violated the Memorandum of Settlement dated March 5, 1982, between the Associated Non-Operating Unions and the Company, in particular the letter of understanding appended thereto as Appendix F, resolving Item 18 of the Memorandum of Settlement - Passes, when on October 20, 1982, the Company issued Circular No. 323 which introduced changes to the existing pass policy.

The Company denies the Union's contention.

FOR THE BROTHERHOOD:

(SGD.) R. Y. GAUDREAU
Vice-President.

There appeared on behalf of the Company:

I. J. Waddell	- Manager, Labour Relations, CPR, Montreal
P. E. Timpson	- Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

R. Y. Gaudreau	- Vice-President, BMWE, Ottawa
H. J. Thiessen	- System Federation General Chairman, BMWE, Ottawa
L. M. DiMassimo	- Federation General Chairman, BMWE, Montreal
V. Dolynchuk	- General Chairman, BMWE, Edmonton

AWARD OF THE ARBITRATOR

As the CROA jurisprudence demonstrates, in the absence of an agreement by the company waiving the prerequisites for presenting an appropriate grievance and processing the same through the prescribed grievance procedure provided under the collective agreement, this tribunal is without jurisdiction to entertain the trade union's complaint.

It is simply irrelevant to that mandatory prerequisite to assert that

the company's senior representatives informally had met with the trade union's representatives as part of the Associated Non-Operating Railway Unions to discuss the company's alleged change in policy with respect to its employees' "pass transportation benefits". The grievance procedure is a mandatory condition precedent with respect to the adjudication at arbitration of any of the matters that fall within the jurisdiction and competence of CROA.

Moreover, merely because the prospect of a settlement of a matter in dispute between the parties may appear unlikely is no reason to unilaterally circumvent the prerequisites of the mandatory grievance procedure. For all the foregoing reasons the trade union's complaint is not a grievance that is arbitrable at this particular juncture.

DAVID H. KATES,
ARBITRATOR.