CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1300

Heard at Montreal, Wednesday, November 14, 1984

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Prairie Region)

and

(RCTC) RAIL CANADA TRAFFIC CONTROLLERS

EX PARTE

DISPUTE:
Claim of the Union that the Company violated Article 8 of the Job Security Agreement, when the position of Operator Shaunavon, Saskatchewan, was abolished.

UNION'S STATEMENT OF ISSUE:

On November 21, 1983, the Company gave notice pursuant to Article 7.08 of the collective agreement of the abolishment of the position of Operator at Shaunavon, Saskatchewan, effective December 1, 1983.

The Union contends that the abolishment was the result of an operational and/or organizational change and that three months notice should have been given pursuant to Article 8.1 of the Job Security Agreement.

The Company disagrees with the Union's contention.

FOR THE UNION:

(SGD.) D. H. ARNOLD
System Chairman, CP Division.

There appeared on behalf of the Company

J. W. McColgan	-	Labour Relations Officer, CPR, Montreal
D. A. Lypka	-	Assistant Supervisor, Labour Relations, CPR, Winnipeg

And on behalf of the Union:

D. H. Arnold	-	System Chairman, CP Division, RCTC, Winnipeg

AWARD OF THE ARBITRATOR

The company challenges the arbitrability of the trade union grievances alleging a breach of Article 8 of the Job Security Agreement when two bargaining unit positions were abolished at Shaunavon and Outlook Saskatchewan. There is no dispute that the company on three occasions acceded to the trade union's request to extend the original deadline of referring its grievances to Step 3 of the grievance procedure contained in the relevant collective

agreement. The trade union representative apparently prepared his written appeal of the company's decision refusing the grievances on March 31, 1984, the last day allowed for appeal. The appeal was posted on that day but was not received by the company's representatives until April 5, 1984.

The company has insisted on the strict compliance of the time limits contained in the collective agreement particularly having regard to the forebearance it has exhibited in extending the deadline on three separate occasions. In this regard the relevant provisions of the collective agreement read as follows:

> "38.06.03 Step 3 If the grievance is not settled at Step 2, the General Chairman may appeal the decision in writing, giving his reasons for the appeal., to the General Manager-Operation and Maintenance, within forty-two calendar days following receipt of the decision rendered in Step 2. The General Manager-Operation & Maintenance will render a decision in writing, giving his reasons for the decision, within forty-two calendar days following receipt of the appeal." (emphasis added)
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> "38.09 When a grievance is not progressed by the Union within the prescribed time limits, it shall be considered as dropped. . . . ." (emphasis added)

The trade union argued that because the collective agreement is silent with respect to the establishing of the deadline of the actual receipt of the appeal for purposes of compliance with Article 38.06.03, I should infer that the mere posting of the appeal in the mails should constitute adherence to the prerequisites of that provision. To support his argument, the trade union representative referred me to the case law on contracts where the principle is established that acceptance of an offer thereby constituting a contract is to be deemed in the absence of some contrary arrangement upon the posting of the acceptance in the mail. In a like fashion because the trade union appeal was posted on the last day allowed for appeal, I should deem that the company received that appeal in a timely fashion.

The trade union's argument is without merit. I do not question the accuracy of the principle cited in the contract cases referred to me by the trade union. What is questioned, however is their relevance. Quite clearly, there is no provision contained in the collective agreement that prescribes that the mails should constitute the medium of communication for the parties' response to grievances referred to under the grievance procedure.

Accordingly, because the collective agreement is "silent" on this aspect of processing grievances it follows that the only certainty that will ensure compliance with the time limits contained in the

grievance procedure is the actual reception of the trade union's appeal. Accordingly, since the trade union admittedly has failed to comply strictly with the exigencies of Article 38.06.03 of the collective agreement, the grievances must be concluded to have been untimely. As a result, those grievances are not arbitrable.

DAVID H. KATES,
ARBITRATOR.