

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1308

Heard at Montreal, Tuesday, December 11, 1984.

Concerning

CN MARINE INC.

and

CANADIAN BROTHERHOOD OF RAILWAY,  
TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Company declined a grievance on behalf of Mr. R. Moore for the difference in wages between the classification of Sr. 2nd Cook and Sr. Chief Cook from the 1st to 15th of February 1984 because it was not submitted within the time limits.

JOINT STATEMENT OF ISSUE:

The Brotherhood submitted a claim on behalf of Mr. R. Moore, dated 20 March 1984 and received by the Company on 27 March 1984, for the difference in wages between a Sr. 2nd Cook and Sr. Chief Cook for the shift from 1 to 15 February 1984.

The Company declined the grievance at Step 1 on the basis that the time limits prescribed in the grievance procedure of Agreement 5.25 had been exceeded.

The Union disagrees.

FOR THE BROTHERHOOD:

(Sgd.) W. C. VANCE  
Regional Vice-President

FOR THE COMPANY:

(Sgd) G. J. JAMES  
Director Industrial Relations

There appeared on behalf of the Company:

N.B. Price - Manager Labour Relations, CN Marine, Moncton, N.B.

And on behalf of the Brotherhood:

W.C. Vance - Regional Vice-President, CBRT&GW, Moncton, N.B.

AWARD OF THE ARBITRATOR

The issue in this case involves the question of determining the exact date "the cause" of Mr. Moore's grievance arose for purposes of computing the forty (40) calendar day time limit for the processing of a grievance. The relevant portions of the grievance procedure reads as follows:-

"23.5        Should an employee believe he has been unjustly dealt with, or that any of the provisions of this agreement have not been complied with (which it is not possible to adjust with the Master), the procedure for adjustment shall be as follows:-

Step 1 Within 40 calendar days from cause of grievance in writing to the Marine Superintendent. A decision will be rendered within 28 calendar days." (Emphasis

"28.3        Where a grievance...- is not progressed by the Brotherhood within the prescribed time limits the grievance will be considered to have been dropped."

Mr. Moore reported for work on February 1, 1984 after he completed his vacation leave. At that time he was assigned the senior second cook's position on the M.V. "Marina Nautica". At that time he protested to the Crew Assignment Officer that he was entitled to the senior chief cook assignment. The grievor performed, as instructed, the senior second cook's position and was paid accordingly on March 15, 1984.

The grievor presented his grievance to the company dated March 20, 1984 on March 27, 1984. The company argued that the 40 calendar day time limit commenced on February 1, 1984 when the "cause" of Mr. Moore's grievance arose. The trade union argued that the time limit commenced to run only when Mr. Moore received his pay cheque on March 15th for performing the senior second cook's job.

In dealing with the parties' submissions, I am satisfied that the "cause" of the grievor's complaint arose on February 1, 1984 when the impugned assignment was made. The grievor at that time, as exhibited by his protest, knew he was going to be paid at the rate attached to the senior second cook's position. And, even if he did not know he should be deemed to have known by virtue of his access to the relevant collective agreement. Surely an employee cannot delay indefinitely the processing of a "timely" grievance until such time as he or she receives confirmation of an alleged violation as shown in a pay cheque. Or, alternatively that employee delays the processing of such grievance for that reason at his or her peril.

Moreover, there is no evidence to support the conclusion that the grievor was lulled into a false sense of security in delaying the processing of the grievance by what was said to him by the Crew Assignment Officer. When the grievor protested the assignment, the Crew Assignment Officer directed that he perform his work and the question would be settled at a later date. In making this direction (and I say this irrespective of whether, as the company claims, reference was made to the filing of a grievance) the Crew Assignment Officer in no manner can be deemed to have waived the time limits for the presentation of an appropriate grievance. Quite clearly, whether explicit or implicitly, the grievor was being told to obey the directive assigning him to the senior second cook's position and to grieve the employer's actions later. Surely, the word "Later" must be deemed to have contemplated a date within the 40-day calendar time

limit.

Finally, I place no reliance on the arbitral awards referred to me by the trade union in the disposition of this case. As in *The Standard Bread Co. Ltd.* (1963)10 LAC 327 (Thomas) circumstances may arise where an employee is advised of a deduction to his pay cheque which does not crystallise into a grievance until the pay cheque is actually received. Quite clearly, it is only at that time that the particulars of any alleged violation of the collective agreement may be concluded to have come to the aggrieved employee's attention.

This was not Mr. Moore's situation. He, at all material times, was aware of the details of his complaint and therefore had no acceptable excuse for delaying the processing of his grievance until he received his pay cheque.

For all the foregoing reasons the grievance is not arbitrable and must be dismissed.

DAVID H.  
ARBITRATOR.