CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1356

Heard at Montreal Wednesday, May 15, 1985

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Claim by Mr. R. Marciniw for loss of wages as a result of not being awarded the position of Group 1 Machine Operator.

BROTHERHOOD'S STATEMENT OF ISSUE:

The Union contends that Job #53 Lakehead Area, Bulletin 03/84, dated March 13, 1984, was not awarded pursuant to the relative provisions of the Collective Agreement. The senior qualified applicant Mr. R. Marciniw, was not awarded the position.

The Company contends that the dispute is not arbitrable.

FOR THE BROTHERHOOD:

(SGD.) G. SCHNEIDER
System Federation General Chairman
Western Lines

There appeared on behalf of the Company:

T. D. Ferens	- Manager Labour Relations, CNR, Montreal
J. Russell	- Labour Relations Officer, CNR, Montreal
M. Menard	- Employee Relations Officer, CNR, Montreal
B. Burnell	- Supervisor Maintenance of Way, CNR, Sioux Lookout

And on behalf of the Brotherhood:

G. Schneider	- System Federation General Chairman, BMWE, Winnipeg
T. J. Jasson	- Federation General Chairman, BMWE , Winnipeg
R. Y. Gaudreau	- Vice-President, BMWE, Ottawa

AWARD OF THE ARBITRATOR

Innumerable CROA precedents have emphasized the principle that the onus rest with the trade union to prove that compliance with the time

limits for the presentation and progression of a grievance through the grievance procedure have been met. Moreover, failure to satisfy that onus leaves the Arbitrator with no discretion in providing relief. This notion was not challenged by the trade union. The collective agreement is plain, definitive and mandatory with respect to compliance.

Accordingly, the trade union argued that it had presented the grievor's grievance at the Step II level of the grievance procedure in the ordinary course of the mail on May 30, 1984. A copy of the said grievance dispatched on the very same day through the mails was received by a trade union representative on June 1, 1984. Therefore it is argued that the company representative must have received the origznal document on June 1, 1984 as well.

The company denied it received any document dated May 30, 1984, at any relevant time. As a result, the company argued that the grievance was not processed in a manner contemplated by the mandatory time limit contained in the collective agreement. Accordingly, it is submitted that I have no choice but to deem that the grievance has been "settled".

Given that the onus of proof rests with the trade union to establish compliance with the time limits, I have no alternative but to determine that the grievor's grievance is not arbitrable. It simply does not follow that because the trade union representative received a copy of the grievance document on June 1, 1984, that the company representative must have received it as well. The trade union's responsibility is to ensure that its intention to advance the grievance are communicated in accordance with the prescribed time limits. And, if the trade union elects to choose the mails as its mode of communication there are means available to it to secure proof of service. The trade union simply acts at its peril in its refusal to take advantage of such services offered by Canada Post.

For the foregoing reasons the grievance is dismissed.

DAVID H. KATES,
ARBITRATOR.