CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1365

Heard at Montreal, Thursday, May 16, 1985

Concerning

CP EXPRESS AND TRANSPORT

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

EX PARTE

DISPUTE:

Concerns the Seniority and Maintenance of Basic Rates of pay of employee Mr. C. R. Patton, Calgary, Alberta, whose last date of entry into Company service is shown as June 27, 1983.

BROTHERHOOD'S STATEMENT OF ISSUE:

The Company's position is that Mr. C. R. Patton is a casual part time helper, that his name and date of seniority does not, nor ever has appeared on any seniority list and declines the grievance claim.

The Union's position is that according to the seniority list that C. R. Patton is shown as holding a clerical grade 5 position which was the highest clerical rate in C.P. Transport, that his rate of pay was the highest clerical rate of 491.70, that his last date of entry into Company service is shown as June 27, 1983, Calgary, Alberta, on the seniority and staff records check list for the year 1983.

That Mr. C. R. Patton be returned to Company service immediately in keeping with his seniority of June 27, 1983, that he be paid his full M.B.R. as provided in Article 8.9 of the Job Security Agreement with increases for 1984 to be based on the position of work he would have held if he had been provided work in line with his seniority and full retroactive payment of wages back to December 1, 1983.

FOR THE BROTHERHOOD:

(SGD.) J. J. BOYCE
General Chairman, System Board
of Adjustment #517

There appeared on behalf of the Company:

N. W. Fosbery - Director, Labour Relations, CPE&T, Toronto

And on behalf of the Brotherhood:

J. J. Boyce - General Chairman! BRAC, Don Mills

G. Moore - Vice-General Chazrman, BRAC, Moose Jaw

AWARD OF THE ARBITRATOR

I have decided to consolidate both CROA Cases #1365 and #1367 in the one decision because they may be disposed of for the same reasons.

In both cases the company rendered its decision in October 1984 declining the grievances at the final level of the grievance procedure (Step III). The trade union did not refer those grievances to CROA until February 27, 1985. The company therefore challenged the arbitrability of the grievances for their being in excess of the sixty (60) day time limit provided under Clause 7 of the CROA Memorandum of Agreement. Clause 7 reads as follows:

> "Failing final disposition under said procedure a request for Arbitration may be made but only in the manner and within the period provided for that purpose in the applicable collective agreement in effect from time to time or, if no such period is fixed in the applicable collective agreement in respect to disputes of the nature set forth in Section (A) of Clause 4, within the period of 60 days from the date the decision was rendered in the last step of the Grievance Procedure."

There is no question that the trade union failed to comply with that sixty day time limit. Moreover, even assuming that the trade union advised the company of its intention to refer its grievances to CROA within the sixty day period (as required by Step IV of the grievance procedure) this would not obviate the necessity of referring the grievance to CROA in accordance with the requisite time limit. CROA Case #848 is a precedent "on all fours" with the two situations described herein:

> "Under the memorandum establishing the Canadian Railway Office of Arbitration, however, a request for arbitration is to be made, not simply by notice to the other party, but rather by filing notice with the Office of Arbitration (and with a copy to the other party). No Notice of the sort contemplated by Clause 7 of the memorandum was filed within the time limits.
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> The arbitrator's jurisdiction is "conditioned always upon the submission of the dispute to the Office of Arbitration in strict accordance with the terms" of the memorandum. The instant

> dispute was not in fact submitted in strict accordance with those terms. The matter, therefore, is not arbitrable and the grievance must accordingly be dismissed."

For like reasons I am compelled to find that the two grievances are not arbitrable.

DAVID H. KATES,
ARBITRATOR.