CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1576
Heard at Montreal, Tuesday, November 11, 1986

Concerning

CP EXPRESS AND TRANSPORT LIMITED

and

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

EX PARTE

DISPUTE:
Concerns the Brotherhood claims that employees required to undergo medical examinations after being hired - at work - in service that such medical examinations be fully paid for by the Company.

BROTHERHOOD'S STATEMENT OF ISSUE:

Employees D. Pengelly, J. Santa and D. Magill, were hired by the company in Edmonton, Alberta, without first requiring these employees to take pre-employment and pass medical examinations as the Company must have required them in service - at work - without delay.

The Union's position is that once employees are hired and in service - at work whether probationary or not that such employees are members of the bargaining unit and then if required to undergo a medical examination at the instance of the Company that such medical examination be fully paid for by the Company.

The Company's position is that these are pre-employment medicals which the employees must take as part of their condition for employment which they said was to be paid for on a 50/50 basis.

The relief requested is for the full payment of such medicals by the Company.

FOR THE BROTHERHOOD:

(SGD.) J. J. BOYCE
General Chairman, System Board
of Adjustment No. 517.

There appeared on behalf of the Company:

D. J. Bennett	- Human Resources Officer, CANPAR, Toronto
B. F. Weinert	- Manager, Labour Relations, CPE&T, Toronto
B. D. Neill	- Director, Labour Relations, CP Trucks, Toronto

And on behalf of the Brotherhood:

J. J. Boyce - General Chairman, BRAC, Toronto
G. Moore - Vice-General Chairman, BRAC, Moose Jaw
M. Flynn - Vice-General Chairman, BnA?, Vancouver

AWARD OF THE ARBITRATOR

It is not disputed that at the time they were required to take their medical examinations the grievors were employees within the bargaining unit. The Collective Agreement appears to make no provision for the payment by the Company for all or part of the cost of a medical examination for other than a permanent employee, as provided in Article 4.3 which provides:

> "4.3 A permanent employee required to undergo a periodic or special medical examination at the request of the Company shall comply, provided, however, that the Company shall pay for all such examinations."

It is not suggested that the foregoing Article applies to the grievors who, at the material times, were probationary and had not achieved permanent employee status. The fundamental issue, therefore, is whether the Company could impose upon a probationary employee, after he or she has been hired and put to work, the requirement to undergo a medical examination at the employee's entire or partial expense. The Union does not dispute that the Company can impose that requirement on a job applicant, as a condition of employment prior to a person being hired. It maintains that it cannot require a person to pay for such an examination if it takes place after he or she is working within the bargaining unit.

The Union submits that in this case what was plainly intended to be a pre-employment condition of hire became a post-hiring condition of continued employment. This would arguably be a term and condition of employment individually imposed upon an employee working within the bargaining unit. It is a fundamental principle of collective bargaining that once a Collective Agreement governs the terms and conditions of employment of a group of employees, there is no room for the individual negotiation of terms and conditions of employment which would normally fall within the terms of such a contract. (See, generally, Syndicat Catholique des Employes de Magasins de Quebec, Inc. v. Compagnie Paquet Ltee (1959), 18 D.L.R. (2d)(S.C.C.); C.P.R. v. Zambri (1962), 34 D.L.R. (2d) 654 (S.C.C.); McGavin Toastmaster Ltd. v. Ainscough (1975), 54 D.L.R. (3d) 1, (S.C.C.).

In the instant case, however, the parties have addressed the issue of medical examinations for members of the bargaining unit in their Collective Agreement. They have provided specific protections in respect of the cost of medical examinations, but only for permanent employees. In these circumstances, the parties must be presumed to have considered the issue. Absent any language to the contrary, they must be taken to have left the question of the requirement of probationary employees to take a medical examination, and to pay for a part of its cost, to the discretion of the Company. On the whole the Arbitrator must conclude, that the parties did not contemplate such a requirement as being inconsistent with the Collective

Agreement. Any alteration in that understanding must be a matter for bargaining.

For the foregoing reasons the grievance must be dismissed

MICHEL G. PICHER,
ARBITRATOR.