CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1784

Heard at Montreal, Thursday, May 12, 1988

Concerning

CANADIAN NATIONAL RAILWAY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

Company's refusal to pay Locomotive Engineers J. H. Bennett, R. P. Boake, J. S. Burant, S. B. Karpinski, C. B. Morgan and M. E. olynyk of Melville, Saskatchewan by regular pay cheque.

BROTHERHOOD'S STATEMENT OF ISSUE:

The Memorandum of Settlement dated March 17, 1982, which provides for Direct Deposit of pay cheques (D.D.S.) is not being adhered to by the Company insofar as that paragraph of the Memorandum which states that if a locomotive engineer refused to supply the Company with a bank account number to which the deposit of his earnings could be made, the Company assured the Brotherhood that a Locomotive Engineer would continue to be paid by cheque.

FOR THE BROTHERHOOD:

(SGD) P. SEAGRIS
General Chairman

There appeared on behalf of the Company:

J. R. Hnatiuk	- Manager, Labour Relations, Montreal
L. A. Harms	- Labour Relations Officer, Montreal
D. Lussier	- Coordinator, Transportation, Montreal
J. Torchia	- Labour Relations Officer, Winnipeg
D. C. St. Cyr	- Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

P. Seagris	- General Chairman, Winnipeg
G. Hall	- General Chairman, Quebec

AWARD OF THE ARBITRATOR

The Company raises a preliminary objection to the arbitrability of

the instant grievance. Firstly, it submits that the Brotherhood has failed to identify any specific article of the Collective Agreement which has been violated and, secondly, that the General Chairman exceeded the sixty calendar day time limit for progressing the grievance under Article 91.1 of the Collective Agreement.

The dispute concerns the practice of the Company to pay the grievors by means of the electronic transfer of funds into bank accounts opened in their name by the Company, rather than by cheque, as they have individually requested. It is common ground that there is no provision within the Collective Agreement dealing with this matter. An agreement between the parties respecting the direct deposit of pay cheques was entered into on March 17, 1982. That agreement has never been made part of the Collective Agreement.

Under the terms of Clause 4 of the Memorandum of Agreement of September 1, 1971 governing the operation of the Canadian Railway Office of Arbitration the jurisdiction of the arbitrator is limited to "... disputes respecting the meaning or alleged violation of any one or more of the provisions of a valid and subsisting collective agreement ..." and "... other disputes that, under the provision of a valid and subsisting collective agreement ... are required to be referred to the Canadian Railway Office of Arbitration for final and binding settlement by arbitration ...". The dispute at hand does not fall within the purview of the foregoing provisions.

I am also satisfied that the grievance is untimely.

The Arbitrator must therefore conclude that the Memorandum of Agreement of March 17, 1982 is not enforceable through the jurisdiction of this office. The grievance is not arbitrable and must therefore be dismissed.

May 13, 1988 (SGD) MICHEL G. PICHER
ARBITRATOR