CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1888

Heard at Montreal, Thursday, 16 February 1989

Concerning

CP EXPRESS & TRANSPORT

And

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

Policy grievance concerning the Company's failure to pay for "drops and hooks" en route.

UNION'S STATEMENT OF ISSUE:

The Union filed a policy grievance September 25, 1987, concerning the Comapny's failure to pay all spareboard mileage-rated highway vehiclemen for drops and hooks en route since September 1985.

The position of the Union is that the Company is required to make such payment under Article 33 of the Collective Agreement.

The Company has denied the Union's policy grievance.

FOR THE UNION:

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

There appeared on behalf of the Company:

M. D. Failes	- Counsel, Toronto
B. F. Weinert	- Manager, Labour Relations, Toronto

And on behalf of the Union:

D. J. Wray	- Counsel, Toronto
J. J. Crabb	- Secretary/Treasurer, Toronto
M. Gauthier	- Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

This grievance is brought on behalf of a number of employees who claim wages based on the interpretation of the Collective Agreement made by this Office in CROA 1637. It is common ground that the claims so filed relate to a demand for retroactive pay in compensation covering a period of some nine months from October of

1986 to June of 1987. The grievances in question were filed after the employees became aware of the result in CROA 1637, which issued in April of 1987.

In the Arbitrator's view the instant case cannot be determined without regard to provisions of Article 17.6 of the Collective Agreement which is as follows:

> 17.6 Settlement of a grievance shall not involve retroactive pay beyond 60 calendar days prior to the date that such grievance was first submitted in writing.

The language of the foregoing provision is clear and categorical. Its obvious purpose, as submitted by Counsel for the Company, is to allow the Company to know, at any given time, its current liability in respect of all wage claims under the Collective Agreement. The Company could be severely prejudiced if employees should be able belatedly to pursue wage claims which involve substantial retroactivity over a period during which the Company was on no notice that the Union or employees disputed its interpretation or application of the Collective Agreement. As noted in the award in CROA 1637, as between the Union and the Company, the proper method of payment for "drops and hooks en route" was clarified on Otober 9, 1987. This was, moreover, a subject of some ongoing controversy of which employees were aware. For that very reason in CROA 1637 the Company pleaded the Union's delay in limitation of the compensation payable. That argument was accepted, in part, in the following terms:

> For these reasons, the grievance must be allowed, to the extent that it refers to events after October 9, 1986. From that date onward, any uncertainty respecting the meaning of Article 33.24.3 was conclusively resolved by the written understanding between the parties. This award should not be taken as a basis to justify any claims declined prior to that date as it appears to the Arbitrator that a substantial number of employees knew that their claims were not being consistently honoured as, by the Union's own evidence, there was a substantial degree of unrest about this issue. To that extent, the Company's argument about the Union's delay must succeed.

There is nothing before the Arbitrator to establish any agreement between the parties that the claim of employee Franz which was the subject of CROA 1637 was intended to be a representative or test case on behalf of any group or class of employees. It was pleaded and disposed of as an individual claim, with obvious prospective value for all employees in like circumstances.

In the Arbitrator's view the instant grievances must be governed by the provisions of Article 17.6 of the Collective Agreement. The employees must be taken to have known, through their bargaining agent, if there was any violation of their collective agreement rights after October 9, 1986. Any failure of diligence in that regard cannot be laid at the Company's feet. For these reasons the Arbitrator must find and declare that the claims of the employees giving rise to this policy grievance must be limited, in respect of any compensation payable to them, to the period of sixty calendar

days prior to the date that their grievance was first submitted in writing. I retain jurisdiction in respect of the implementation of this award.

February 17, 1989 (Sgd.) MICHEL G. PICHER
ARBITRATOR