CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1959

Heard at Montreal, Wednesday, 11 October 1989

Concerning

CP EXPRESS & TRANSPORT

And

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

On or about November 26th, 1988, six probationary employees were told that they must attend a Defensive Driving Course held by the Company on their own time.

JOINT STATEMENT OF ISSUE:

This matter of concern involves six (6) probationary employees (all drivers) having to attend a Company held driving course on their own time without compensation.

The Union argues that these employees are entitled to the same benefits accorded to non-probationary employees; that of compensation at the applicable rate of pay for attending such courses.

The Company has maintained that these employees waived these rights because they signed conditions of employment (those relating to the Company's Safety How Manual).

The Union maintains that these employees attended on their rest days and therefore, in line with the above reasons, should have been paid accordingly as all other employees did who attended these courses.

FOR THE UNION:	FOR THE COMPANY:
(SGD) J. J. BOYCE General Chairman System Board of Adjustment 517	(SGD) B. F. WEINERT Manager, Labour Relations

There appeared on behalf of the Company:

B. F. Weinert - Manager, Labour Relations, Toronto

And on behalf of the Union:

J. J. Boyce - General Chairman, Toronto
J. Crabb - Secretary/Treasurer, Toronto
M. Gauthier - Vice-General Chairman, Toronto

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the grievors, who were probationary employees, were required by the Company to attend a course on defensive driving. The course was scheduled during their day off, and they were not paid. The Company seeks to justify its action on the basis of individual agreements signed by the probationary employees at the time they were hired which contain in part the following statement:

Defensive Driving Skills Course (8 hours) to be completed on employee's own time as a condition of employment.

It is not disputed that the employees in question are part of the bargaining unit whose terms and conditions of employment are governed by the Collective Agreement. The agreement contains no provision concerning training. Article 13 governs overtime and specifically Article 13.4 provides for overtime rates of time and one-half for work in excess of forty straight time hours or five days in any work week. The status of probationary employees is addressed in Article 6.2.4. which provides as follows:

> 6.2.4 A new employee shall not be regarded as permanently employed until completion of 65 working days cumulative service. In the meantime, unless removed for cause which in the opinion of the Company renders him undesirable for its service, the employee shall accumulate seniority from the date first employed on a position covered by this Agreement.
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> An employee with more than 65 working days cumulative service shall not be discharged without being given a proper interview as provided in Article 8 of this Agreement.

The issue raised in this grievance is whether the Company is at liberty to make individual contracts with newly hired employees, the terms of which are inconsistent with the provisions of the Collective Agreement. It appears to the Arbitrator beyond dispute that the requiring of employees to attend at a training session, presumably under the liability of discipline for non-compliance, is to require them to engage in productive activity for the benefit of the employer. Given that the object of the training course was the furtherance of the employer's business endeavours, and that employees were required to attend and participate in it, I am satisfied that their involvement in that regard would fall within the meaning of "work" as that term is understood within the framework of the Collective Agreement. (See CROA 1513.)

It is well established in Canadian labour law that when a trade union has become the certified bargaining agent for a group of employees, and negotiates a collective agreement covering their terms and conditions of employment, subject to such qualifications and exceptions as may be negotiated between the employer and union, there is no longer any room for the negotiation of individual contracts of employment, to the extent that the terms of such contracts conflict with the provisions of a collective agreement. (See McGavin

Toastmaster Ltd. v. Ainscough [1976] 1 S.C.R. 718.) The Arbitrator is therefore compelled to conclude that in this case the individual agreements purportedly negotiated with the probationary employees cannot supercede the wage provisions of the Collective Agreement. By requiring the employees to attend at a training session other than on their scheduled work day, the Company has violated the fundamental obligation within the Collective Agreement to pay wages for work performed.

The specific details with respect to the hours and days worked by the six employees in question are not before the Arbitrator, it is therefore impossible to know whether any or all of them were entitled to remuneration at overtime rates, or at straight time rates, within the contemplation of the Collective Agreement. That, in any event, is a matter which can be spoken to in the event of any further disagreement between the parties.

For the foregoing reasons the grievance is allowed. The Company shall forthwith compensate, at appropriate rates of pay, the probationary employees required to attend the 8 3/4 hour defensive driving course on November 26, 1988.

October 12, 1989 (Sgd.) MICHEL G. PICHER
ARBITRATOR