CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2072

Heard at Montreal, Wednesday, 14 November 1990

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

EX PARTE

DISPUTE:

On April 16, 1987, CN Police chose Labourer D. Goldhawk in a spot check to search his gym bag and other belongings.

BROTHERHOOD'S STATEMENT OF ISSUE:

It is the union's position that every worker has the right to be secure against unreasonable search and seizure and that CN Police acting on behalf of the company cannot discriminate against an employee without advising the employee of the charges against him.

The grievance was processed through the grievance procedure. The company asserts that the policy grievance is not arbitrable and has declined to join the union in a Joint Statement of Issue.

FOR THE BROTHERHOOD:

(SGD) TOM McGRATH
NATIONAL VICE-PRESIDENT

There appeared on behalf of the Company:

B. R. O'Neil	-- Labour Relations Officer, Montreal
M. M. Boyle	-- Manager, Labour Relations, Montreal
S. Grou	-- Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

A. Cerilli	-- Regional Vice-President, Winnipeg
T. McGrath	-- National Vice-President, Ottawa

PRELIMINARY AWARD OF THE ARBITRATOR

The company has raised a preliminary objection to the arbitrability of this grievance. In the Arbitrator's view, as a matter of general principle, the objections taken by the Company would appear to have some foundation in the precedents of this Office (CROA 924) as well as other arbitration awards from within the railway industry (see

e.g. Ontario Northland Railway and Division No. 4, Railway Employees Department AFofL--CIO, award dated October 30, 1980 (Weatherill)).

Moreover, the Arbitrator is not persuaded by the submission of the Brotherhood's representative that the requirements of the Memorandum of Agreement establishing the Canadian Railway Office of Arbitration, and in particular the obligation to particularize the articles of the Collective Agreement alleged to be violated, either in a joint statement or in an Ex Parte statement, as provided in Paragraph 8 of the Memorandum, have no application in the case of a policy grievance. It is, of course, open to any Union participant in the Canadian Railway Office of Arbitration to file a policy grievance and to pursue it to arbitration, subject always to the provisions of the collective agreement in question and to the requirements of the CROA Memorandum. There is nothing in the Memorandum which exempts the requirement for specificity as to the disclosure of the articles of the Collective Agreement which are alleged to have been violated in the case of a policy grievance. The position of the Brotherhood in respect of this aspect of the dispute must therefore be rejected.

There are, however, equitable considerations which, in the Arbitrator's view, override the preliminary objection of the Company in this case. The unchallenged representation of the Brotherhood's spokesperson is that on April 14, 1989, when the Brotherhood's claim was in the same form as it is now presented, the Company's representative agreed to allow it to be processed to be heard in this Office. The Company's representative was not at the hearing, and it may be that he had an intention different from that that was gathered by the Brotherhood's officer. However, I am satisfied, on the balance of probabilities, that an indication was given which the Brotherhood believed, or had reasonable grounds to believe, was tantamount to an agreement by the Company that this dispute should be heard in the Canadian Railway Office of Arbitration. It appears that the communication between the two gentlemen was the result of an abortive attempt to have the matter first dealt with through a separate expedited grievance and arbitration process. It would, in my view, be inequitable to permit the Company to now reverse a position ostensibly taken previously, and upon which the Brotherhood has relied to progress this matter to arbitration. For this reason the Arbitrator must reject the preliminary objection made by the Company. The grievance shall therefore be docketed to be heard on its merits.

November 16, 1990 (Sgd.) MICHEL G. PICHER
ARBITRATOR