CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 183

Heard at Montreal, Tuesday, October 14th, 1969

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

EX PARTE

DISPUTE:

Concerning the interpretation and application of Article 19.2 of the current collective agreement between the Canadian National Railways, Hotel Department and the Canadian Brotherhood of Railway, Transport and General Workers governing the employees of the Chateau Laurier, Ottawa, Ontario.

EMPLOYEES' STATEMENT OF ISSUE:

The Brotherhood has requested that effective January 1, 1969, the Company assumes the monthly premium costs for basic benefits under the Employee Benefit Plan Supplemental Agreement.

The Company claims that the grievance is not valid and has declined our request.

The Brotherhood contends that the grievance is valid and that the Company is in violation of Article 19.2 of the current collective agreement.

FOR THE EMPLOYEES:

(SGD.) J. A. PELLETIER
EXECUTIVE VICE-PRESIDENT

There appeared on behalf of the Company:

P. A. McDiarmid	– Labour Relations Assistant, Montreal
B. Turner	– Labour Relations Supervisor, Montreal
L. J. Monfils	– Assistant Manager Personnel, Chateau Laurier, Ottawa

And on behalf of the Brotherhood:

J. A. Pelletier	– Executive Vice-President, Montreal
P. E. Jutras	– Regional Vice-President, Montreal
L. St. Pierre	– Local Chairman, Ottawa

INTERIM AWARD OF THE ARBITRATOR

This is a grievance relating to the payment of premiums for health and welfare benefits. The Company has raised, in timely fashion, the preliminary objection that the matter has not been properly processed through the grievance procedure, and accordingly is not arbitrable. This award deals only with the preliminary question of arbitrability.

The grievance procedure is set out in Article 14 of the collective agreement, and provides for the processing of grievances through several steps, with certain time limitations effective with respect to each step. It is the Company's main contention that this grievance was not properly presented at step one, and in any event was not processed to step two within the proper time limits.

The grievance, which raises a question of general application, was presented by Mr. L. St. Pierre, Local Chairman of the Union. In effect, it is a grievance "by a group of employees", as contemplated by Article 14.2, although it makes no difference to the issue before me whether it be considered as an individual or a group grievance. The issue raised by the grievance is purely a matter of interpretation of the collective agreement. The matter was raised by Mr. St. Pierre in conversation with Mr. Monfils, the Assistant Manager Personnel, on or about February 13. The Company contends that this conversation did not constitute the presentation of the grievance as contemplated at step one of the grievance procedure set out in Article 14. This contention appears to be quite correct, since the conversation seems to have been nothing more than a request for information. Since the Union does not assert that this was the presentation of the grievance, the matter need be considered no further.

It is the Union's position that the grievance was presented to Mr. St. Pierre's Department Head some time after the middle of March. The Department Head in question is Mr. L. Cabana, Bar Supervisor. Mr. Cabana indicated to Mr. St. Pierre that he could do nothing about the matter and that he should speak to Mr. Monfils. Mr. St. Pierre then spoke to Mr. Monfils, and was subsequently advised by him that the Company declined to make the payments sought. It was after this, On March 29th, that Mr. St. Pierre wrote to Mr. Foster, the Manager, bringing the grievance to step two. It may be observed that that was the first point at which the grievance was required to be in writing.

The foregoing account is based on the statements made by Mr. St. Pierre at the hearing of this matter. Although the Company indicated that it had "no record" of the conversations in March, the statements made by Mr. St. Pierre were not controverted. Mr. Cabana was not in attendance at the hearing, although Mr. Monfils was. In the circumstances, it can only be concluded that the grounds of objection have not been established. On the contrary it appears that the grievance procedure has been complied with. It may be noted that this grievance, which relates to the deduction of contributions to health and welfare premiums from the employees' wages, is of a continuing nature, and might be brought with respect to any occasion when such deductions are made.

The Company has also taken objection to the form of the written grievance, presented to the Manager at step two. In his letter to Mr. Foster, Mr. St. Pierre recited that Mr. Monfils had declined the "request", repeated the union's contention as to the premium payments, and concluded by saying "Will you kindly advise me of your intention, and if you fail to agree with our request, consider this as step two of our grievance procedure". The Company takes the position this was a "conditional" grievance. I am unable to see any substance in this objection. The continuance of any grievance is "conditional" upon the grievance not being satisfied. In the instant case, the grievance is not conditional upon the happening of any other contingency. The request that the letter be considered as step two of the grievance procedure (unless the grievance was granted) is quite plainly nothing more than a respectful way of advising the Manager that it in fact was the second step of the grievance procedure.

There is no doubt of the necessity for strict compliance with the requirements of the grievance procedure. This matter has been dealt with in many previous cases, the most recent of which is **Case No. 149**. No lack of compliance appears in the instant case, as I have indicated, and I find that the matter is properly before me. Accordingly the objection is denied, and the case will be listed for hearing on the merits.

(signed) J. F. W. WEATHERILL
ARBITRATOR

On Wednesday, November 12th, there appeared on behalf of the Company:

P. A. McDiarmid	– Labour Relations Assistant, Montreal
B. Turner	– Labour Relations Supervisor, Montreal
W. S. Hodges	– System Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

J. A. Pelletier	– Executive Vice-President, Montreal
P. E. Jutras	– Regional Vice-President, Montreal
L. St. Pierre	– Local Chairman, Ottawa
J. R. Grealy	– Representative, Ottawa

AWARD OF THE ARBITRATOR

The substance of this grievance is that the Company is in violation of article 19.2 of the collective agreement, by reason of its continuing to deduct from the employees' wages a portion of the premium payable for Welfare benefits. Article 19 of the Agreement, in its entirety, is as follows:

> Health and Welfare
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> **19.1** The Company shall deduct from the wages due and payable to each participating employee each month in which compensated service is rendered an amount (if available after payroll deductions required by law, deduction of monies which on account of employer-employee relationship becomes due or owing to the Company and pension deductions) equal to half the sum required to provide such an employee with benefits under the "Benefit Plan for Employees of the Canadian Railways", in accordance with the Supplement Agreement to the Master Agreement of May 16, 1956, as amended, between the Non-Operating Unions and the Canadian Railways and subject to the terms of a letter dated September 10th, 1957 from Mr. J. L. Toole, Co-Chairman, Employee Benefit Plan Committee, annexed and made a part hereof as Schedule "C". The Company shall contribute each month an amount equal to the amount so deducted.
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> **19.2** It is recognized that the Plan referred to in Article 19.1 and as made applicable to the employees covered by this Agreement, is subject to amendments or revisions and to contribution increase or decreases from time to time. Such amendments, revisions, increases and decreases if, as and when adopted shall be considered to be incorporated into this Agreement.

The "Benefit Plan for Employees of Canadian Railways" was established on January 1, 1957, pursuant to an agreement between a number of railroad companies and their non-operating employees, represented by the associated railway unions signatory to the agreement. This union was not a signatory to that agreement. On September 10, 1957, however, the union (or it predecessor) was advised that the Employee Benefit Plan Committee had approved the admission into the plan of certain groups of employees, including employees of the Chateau Laurier Hotel, covered by the collective agreement before me. It was made clear, however, and it remains the case, that participation in the plan did not give these employees, nor their union, any voice in the direction or administration of the plan. That remained the prerogative of the signatories to the Master Agreement, and it remains so now. The situation is simply that it has been made possible for the employees covered by the collective agreement before me to participate in the Benefit Plan; the collective agreement contemplates such participation and in Article 19.1 provides for the payment of the premiums, that is, the sums required to provide the employees with the benefit accruing under the plan. In particular, it is provided that the company is to deduct one-half of such premium from the wages of each participating employee, and itself contribute an equal amount, each month.

The collective agreement does not specify the amounts of premiums. The extent of the health and welfare benefits under this agreement is determined by reference to the "Benefit Plan for Employees of the Canadian Railways". The cost of the benefits, whatever it may be, is to be shared by the company and the employees. It is recognized that there may be amendments or revisions to the benefit plan, affecting perhaps the extent of the benefits or the administration of the plan, and these are matters beyond the control of the parties, being within the prerogative of the signatories to the Master Agreement. It is also recognized that there may be increases or decreases in the amounts of the premiums, or contributions, payable in respect of these benefits. Article 19.2 provides that any such increases or decreases "shall be considered to be incorporated into this Agreement".

Over the years, there have been changes in the benefits accruing under the plan, and in the amounts of monthly premiums charged. On three occasions, premiums have been increased, and on two occasions they have been reduced. At the time the present collective agreement became effective, March 1968, the premium was $5.01 per month. On January 1, 1969, the premium was increased to $6.82 per month. Throughout the term of the collective agreement the company has, pursuant to article 19.1, deducted one-half of the premium from the wages of each participating employee, and contributed one-half of the premium itself. Thus, before January 1, 1969, the amount deducted was $2.555 per month in each case. Since that date the deduction would be $3.41 per month.

This change in the monthly premium was accompanied by improvements in the extent of the benefits under the plan. These changes were effected as a result of amendments to the Master Agreement between the railroad companies and their non-operating employees, and to the Supplemental Agreement between those parties under

which the Employee Benefit Plan is established. These changes are the sort of "amendments, revisions, increases and decreases contemplated by Article 19.2 of the collective agreement, but it is important to remember that they are matters outside the direct control of the parties to this agreement. Amendment of the "Benefit Plan for Employees of the Canadian Railways" is not amendment of this collective agreement.

The several railway companies and their non-operating employee represented by the associated railway unions which were signatories amended to their Master Agreement to provide, effective January 1, 1969, that the monthly premium costs of benefits under the Employees Benefit Plan be paid by the railways, and it was accordingly agreed to amend the Supplemental Agreement so as to provide that "for employees covered by this Master Agreement the employees' share of premiums therein referred to shall be assumed by the Railways". In accordance with this agreement the railway companies concerned now pay the whole of the premiums payable to the Benefit Plan, in respect of the non- operating employees represented by the associated railway unions to that agreement. The employees of the Chateau Laurier Hotel and the company continues to deduct from their wages one-half of such premium as set out above.

It is the union's contention that Article 19.2 of the collective agreement before me requires the company in these circumstances to pay the full amount of the premium in respect of employees coming under this collective agreement, just as it does for the employees coming under the Master Agreement. The union argues that the company "saw fit to extend the improved benefits resulting from the latest amendments to the Employee Benefit Plan" to these employees, but "did not extend" to them "the abolition of the fifty percent contributions to the Plan by the participating employees". It should be noted that the company has no choice in the matter of "extending either benefits or costs under the Employee Benefit Plan. Although it is one of the participating companies in the group of companies which, in agreement with employees represented by certain unions, established the Plan, the plan now exists independently, and has simply been adopted as such by the parties to this collective agreement. The employees are entitled to the benefits as they are provided from time to time, as article 19.2 makes clear. The company can neither extend nor withdraw, such benefits. Whatever they may be, the employees are entitled to them. By the same token, of course, the company, no more than the employees, cannot control the amount of the premiums charged. This again is within the prerogative of the signatories to the Master Agreement.

The issue here is not the extension of benefits or the increase in the premium. It is rather the alleged obligation of the company to pay the whole amount of the premium. It is argued that the "contribution reduction" enjoyed by the employees covered by the Master Agreement is, pursuant to Article 19.2, to be incorporated into the present collective agreement. I am unable to accept this contention. In my view the reference in article 19.2 to "amendments or revisions" and to "contribution increases or decreases" to which the Benefit Plan may be subject, is a reference to fluctuations in the extent of the benefits provided and to the cost of those benefits. In particular, article 19 recognizes that the sums required to provide the benefits may vary, and a greater or lower "contribution" may be required from time to time. It is clear to me that article 19.2 simply incorporates these changes in the amount of premiums to be paid, into the agreement. It does not affect the provision, set out in article 19.1, as to the way in which these premium payments are to be borne by the parties to this agreement.

The interpretation of article 19.2 which is urged by the union would involve an alteration of the clear language of article 19.1. I have no doubt that, reading article 19 as a whole, this was not intended. In its bargaining with other groups of employees, the company has taken on the obligation of paying the whole cost of certain welfare benefits. That agreement was made with respect to employees covered by the Master Agreement.

The employees concerned in this case are not such employees. Their rights are determined under the present collective agreement. That agreement provides for equal sharing of the costs of benefits. While the agreement, in article 19.2 does contemplate changes in these costs, it does not contemplate changes in the manner of sharing those costs.

Accordingly, the company does not violate article 19.2 when it continues to deduct from the wages of participating employees, one-half of the premiums currently payable under the Employee Benefit Plan. The grievance must therefore be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR