CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 633

Heard at Montreal, Thursday, September 15, 1977

Concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION (T)

EX PARTE

DISPUTE:

Whether the award of the Honourable Emmett M. Hall, the arbitrator appointed under the Maintenance of Railway Operations Act, 1973, dated January 8, 1975 relating to the crew consist issue forms part of the current collective agreements between the parties.

COMPANY'S STATEMENT OF ISSUE:

The Company's position is that the "Crew Consist award" forms part of the current collective agreements because by agreement of the parties dated February 1, 1974 and by virtue of the Maintenance of Railway Operations Act, 1973 it formed part of the collective agreements in force in 1974 which, in that particular, have never been revised or superseded. On the proper construction of, inter alia, the "Duration of Agreement" articles of the collective agreements the terms of the crew consist award therefore continue in force a part of the current agreements.

FOR THE COMPANY:

(SGD.) C.R.O. MUNRO
FOR: ASSISTANT VICE-PRESIDENT, LAW

J. D. BROMLEY
GENERAL MANAGER, PACIFIC REGION

R. J. SHEPP
GENERAL MANAGER, PRAIRIE REGION

L. A. HILL
GENERAL MANAGER, EASTERN REGION

R. A. SWANSON
GENERAL MANAGER, ATLANTIC REGION

There appeared on behalf of the Company.

C. R. O. Munro, Q.C	– Assistant Vice-President, Law, Montreal
T. Moloney	– Solicitor, CP Rail
R. Colosimo	– Assistant Vice-President, Industrial Relations

And on behalf of the Brotherhood:

M. W. Wright,Q.C.	– Counsel, Ottawa
G. W. McDevitt	– Vice-President, Ottawa
R. T. O'Brien	– Vice-President, Richmond
L. H. Breen	– General Chairman, Scarborough,

AWARD OF THE ARBITRATOR

The matter before me is in the nature of a "Company grievance" seeking, it seems, a declaratory award to the effect that the collective agreements currently in effect between the parties include the "Crew Consist" award which was a part of the award issued by the Honourable Emmett M. Hall pursuant to the **Maintenance of Railway Operations Act**, 1973.

The Union has raised a number of preliminary objections to this matter now being heard in the Canadian Railway Office of Arbitration. The first of these is that the matter is *sub judice*. On November 5, 1975, the Company commenced an action against the Union in the Federal Court for a declaration that the terms of the crew consist award formed part of the current collective agreements. The issue in that matter was indeed the issue sought to be raised in these proceedings. In reasons for judgment dated April 1, 1977, Dube, J., dismissed the action, holding that the Court had no jurisdiction "to entertain the interpretation of the collective agreement as this is a matter that can only be decided by resort to the machinery provided in the agreement between both parties and the **Canada Labour Code**". From a reading of the judgment, it is clear that his Lordship considered that this was the sort of matter which ought properly to be heard in the Canadian Railway Office of Arbitration.

The Company subsequently filed notice of appeal of the judgment of the Trial Division of the Federal Court. That appeal is pending, and until the matter has been finally resolved by the Court, or until the appeal is withdrawn, the matter is *sub judice* and in my view it would be improper for me to purport to deal with the case on its merits. Since it appears from the judgment that this is the sort of matter in which I would have jurisdiction as arbitrator in the Canadian Railway Office of Arbitration, the proper course, I think, is to adjourn the matter *sine die* pending the resolution of the issue still before the Court.

In view of the very able and interesting arguments made before me, however, I think it may be of assistance to the parties for me to make certain very limited comments in the matter, these not having any direct bearing on the issue before the Court, but touching merely on the grievance and arbitration process itself.

First, I would note that while the Court, in the judgment now subject to appeal, treats the issue raised as one which "cannot but be a dispute respecting the meaning of a collective agreement" (reasons for judgment, p.14), so that the issue may be said to be one which is "arbitrable" in a general sense, this is not to say that this particular grievance is "arbitrable" in the sense that it is subject to a grievance procedure, that the terms of that procedure have been complied with, or that the requirements of the memorandum establishing the Canadian Railway Office of Arbitration (under which – together with the collective agreements in question – I would have jurisdiction), have been met. Thus, even if the appeal fails or is withdrawn, so that it could be said to be *res judicata* that the issue is in general an arbitrable one, it would not have been decided that this particular grievance is properly before me. For this reason, the Union is not now foreclosed from arguing that I have no jurisdiction in the matter, even though it may have argued before the Federal Court that only I would have jurisdiction in the matter. There has been no necessary contradiction in the positions taken by the Union.

Second, it is not clear that, under the particular collective agreements in question, the Company is entitled to present a grievance and to proceed with it to arbitration. Under the legislation of certain of the Provinces, it has been held that "Company grievances" are, in general, arbitrable even in the absence of specific provision therefor in the collective agreement. Since the labour relations between the present parties are subject to the **Canada Labour Code**, and in view of the specific limitation on my jurisdiction set out in the memorandum establishing the Canadian Railway Office of Arbitration, it is my view that there is a question of jurisdiction which ought to be fully argued if the matter eventually proceeds in this office.

For the reasons above set out, the matter is adjourned *sine die*.

(signed) J. F. W. WEATHERILL
ARBITRATOR

Note: This case was subsequently discontinued by the Company. See **CROA 663**.