CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 678

Heard at Montreal, Tuesday, October 10th, 1978

Concerning

CANADIAN PACIFIC EXPRESS LTD.

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

DISPUTE:

An interpretation of Article 8.7 of the Working Agreement moving grievance into Step 2 of Article 17.1 under time limits.

JOINT STATEMENT OF ISSUE:

Article 8.7 of the Working Agreement reads:

> If the employee considers the decision rendered is unjust, an appeal may be made, commencing with Step 2 of the grievance and arbitration procedure.

Article 17.1 Step 2 of the Working Agreement reads:

> If the grievance is not settled at Step 1 the Vice-General Chairman may appeal the decision in writing, giving his reasons for the appeal, to the officer designated by the Company, within 28 calendar days following receipt of the decision rendered in Step 1. Such Company officer will render a decision in writing, giving his reasons for the decision, within 28 calendar days following receipt of the appeal.

The Brotherhood contends no time limit exists when grievances are moved under Article 8.7 into Article 17.1 Step 2 of the grievance procedure.

The Company contends time limits as outlined in Step 2 apply.

FOR THE EMPLOYEES:

(SGD.) L. M. PETERSON
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. R. SMITH
DIRECTOR, LABOUR RELATIONS AND ADMINISTRATION

There appeared on behalf of the Company:

L. Brunelle – Regional Manager, Montreal
D. R. Smith – Director, Labour Relations & Administration, Toronto
D. Cardi – Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

J. J. Boyce – Vice General Chairman, Toronto
F. W. McNeely – General Secretary Treasurer, Toronto
M. Gauthier – Local Chairman, Montreal

AWARD OF THE ARBITRATOR

Article 8 of the collective agreement deals with the matter of investigations and discipline. It calls for the investigation, in accordance with the provisions of the article, of circumstances in which the imposition of discipline may be contemplated and, under Article 8.6, for the rendering of a decision within 21 calendar days following the date of completion of the investigation.

Article 8.7, set out above, provides for the lodging of an appeal by an employee who has been disciplined in accordance with the foregoing. By Article 8.7, such appeal may be made "commencing with Step 2 of the grievance and arbitration procedure".

The grievance and arbitration procedure is set out in Article 17 of the collective agreement. Step 2 thereof appears in Article 17.1 and is set out above. The general grievance procedure begins with Step 1, under which an employee or Local Chairman may present a grievance in writing to the immediate supervisor within 14 calendar days following the cause of the grievance. The supervisor is to render his decision within 14 calendar days of receipt of the grievance. If the grievance is not settled at Step 1, then an appeal may be made at Step 2, within 28 calendar days following receipt or the decision rendered in Step 1. In the case of ordinary grievances, then, the 28-day time limit set out in Step 2 of Article 17.1 quite clearly applies.

The issue in the instant case is whether that 28-day time limit applies to the bringing of appeals from decisions relating to discipline, made pursuant to Article 8 of the collective agreement. It is my view that it does. It seems clear to me that the reference in Article 8.7 of the "investigations and discipline" clause to "Step 2 of the grievance and arbitration procedure" is a reference to a method of bringing forth grievances in discipline matters. In such cases, the general grievance procedure is abridged somewhat, the Step 1 process being, quite reasonably in view of the requirement of investigation, eliminated. Article 8.7 does not itself set out any time limit for the filing of grievances – or "appeals" – in disciplinary matters. It is not necessary that it should do so, since Step 2 itself contains a time limit within which its provisions may be involved. Of course, that time limit is expressed as running from the time when "the decision rendered in Step 1" is given. In discipline cases, there is no "decision rendered in Step 1". There is, however, a decision rendered pursuant to Article 8.6, and I have no doubt that the intent of the collective agreement is that when Step 2 is resorted to by way of appeal from a disciplinary decision, it applies in equivalent terms to such a situation, as it would to a grievance being processed in the usual way. For purposes of grievances in discipline cases, the decision rendered pursuant to Article 8.6 is quite clearly the equivalent of a decision rendered at Step 1 in an ordinary grievance. Thus the 28-day time limit applies to the presentation of discipline appeals at Step 2, as it does to any other grievance. The net effect of this, it may be observed, is that while there exists a 14-day time limit for the filing of ordinary grievances, there is a 28-day time limit for the filing of discipline grievances. If the limit set out in Step 2 did not apply in discipline matters, then there would be no time limit applying to such cases, even although the collective agreement carefully sets out time limits at every stage of the grievance procedure.

For the foregoing reasons, it is my conclusion that in grievances brought pursuant to Article 8.7 of the collective agreement, the time limits set out in Step 2 of Article 17.1 do apply.

(signed) J. F. W. WEATHERILL
ARBITRATOR