CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 828

Heard at Montreal, Tuesday, April 14, 1981

Concerning

CANADIAN NATIONAL RAILWAYS

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

That McKellar Island is part of greater Thunder Bay Terminal Limits serviced by Yard Crews and Article 12.1 applied to Locomotive Engineers in Freight Service and therefore Engineer W. Pilot was denied the benefit of this Article.

EMPLOYEES' STATEMENT OF ISSUE:

1. Yard Engines shoptracked at Neebing service McKellar Island, therefore on arrival at Neebing a Freight Engineer would be in a final Terminal where Yard Engines are on duty.

2. McKellar Island to be a point outside the Switching Limit of Yard Engines would be switched by Freight Crews only.

3. That the Company is designating a specific place in an Industrial Switching Area serviced by Yard Engines to circumvent Article 12 of Agreement 1.2.

4. Violation of Article 53.1. Again changing the application of a negotiated item so as to defeat past practice, instead of renegotiation.

FOR THE EMPLOYEES:

(SGD.) A. J. BALL
GENERAL CHAIRMAN

There appeared on behalf of the Company:

J. A. Fellows	– System Labour Relations Officer, Montreal
P. L. Ross	– Coordinator Transportation - Special Projects, Montreal
A. J. DelTorto	– Consultant, Montreal

And on behalf of the Brotherhood:

A. J. Ball	– General Chairman, Regina
J. P. Riccucci	– Special Representative, Montreal

AWARD OF THE ARBITRATOR

The "dispute" submitted by the Union in this case appears to embody the substance of a grievance filed by the grievor, Engineer W. Pilot, and to raise as well a number of other issues which, while they might properly be the subject of grievances and ultimately subject to arbitration, were not in fact processed through the grievance procedure provided for by the Collective Agreement. The Company quite clearly declined to waive the requirement of compliance with the grievance procedure with respect to these distinct issues.

Apart from this, while the Union seeks to have the matter heard in the Canadian Railway Office of Arbitration by way of "ex parte" proceedings, it has not followed the procedure set out in the Memorandum of Agreement establishing the Office of Arbitration in that it did not give the other party the notice required by Article 8 of the Memorandum. By the terms of the Memorandum, the Arbitrator has jurisdiction only with respect to matters submitted in conformity with the procedures which the parties have established. The Union has not complied with the requirements of the Memorandum in this case, and I have no jurisdiction in the matter, nor any power to relieve against the consequences of the Union's failure.

It was contended on behalf of the Union that the **Canada Labour Code** demands that there be access to arbitration, and that the "due process" requirements have been met. Article 8 of the Memorandum of Agreement, it is said, cannot supersede the provisions of the Code. Of course that is so: the provisions of the statute must prevail. The requirement of the Code, however, is that the Collective Agreement contain a provision for final settlement "by arbitration or otherwise" of differences arising under the Collective Agreement. In fact, the parties have, in their Collective Agreement, made provisions for a grievance and arbitration procedure, with "final settlement" by arbitration in the Canadian Railway Office of Arbitration The requirement of the Code that there be a provision for final settlement does not invalidate the reasonable procedures, including stages of the grievance procedure, time limits, notice requirements and the like which the parties have set out to make the grievance and arbitration procedure effective. The parties have, in my view, complied with Section 155 of the Code in establishing grievance and arbitration procedures as they have done. The Code does not relieve them of the necessity of complying with those procedures where they wish to take advantage of them. It is not open to either party to "break down" the arbitration procedures, but it is necessary that any party seeking to use those procedures follow the Agreement made with respect to them. The Union has failed to do that in this case, with the result that the grievance is not arbitrable.

For the foregoing reasons, these proceedings are terminated.

(signed) J. F. W. WEATHERILL
ARBITRATOR