CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 973

Heard at Montreal, Tuesday, September 14th, 1982

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
EASTERN REGION

and

UNITED TRANSPORTATION UNION
EX PARTE

DISPUTE:

Removal of Mr. T. P. Smith from the Enginemen's Training Program at North Bay.

EMPLOYEE STATEMENT OF ISSUE:

The Company removed Mr. T. P. Smith from the Enginemen's Training Program for being on authorized leave of absence between March 14th and March 27th, 1981.

Further the Company claims Mr. T. P. Smith demonstrated performance that he did not measure up to the standards of the Program.

The Union contends Mr. T. P. Smith has been unjustly treated and that he had fulfilled the requirements in accordance with Paragraph No. 6 of the Memorandum of Agreement dated December 17, 1971.

The Union further contends that Mr. T. P. Smith be reinstated in the Enginemen's Training Program without loss of Seniority.

FOR THE EMPLOYEE:

(SGD.) B. MARCOLINI
General Chairman,
Eastern and Atlantic Region, UTU.

There appeared on behalf of the Company:

L. A. Clarke	- Supervisor, Labour Relations, CP Rail, Toronto
B. P. Scott	- Labour Relations Officer, CP Rail, Montreal

And on behalf of the Union:

B. Marcolini	- General Chairman, UTU, Scarborough
J. Sandie	- Vice-President, UTU, Sault Ste. Marie
J. Shannon	- Local Chairman, 634, UTU, Montreal

AWARD OF THE ARBITRATOR

This matter relates to certain disciplinary action taken with respect to the grievor, namely his removal from the Engineman's Training Program because of unauthorized absence.

The Company raises the preliminary objection that the matter is not arbitrable, as not having been submitted to arbitration within the time limits set out in the Collective Agreement.

The facts are not in dispute. The grievor was advised by telephone on April 16, 1981, that he was removed from the Program. Written reasons were furnished on April 20. A grievance was filed, and it was processed in timely fashion up to the last step of the grievance procedure, that of appeal to the General Manager. The General Manager's decision, denying the grievance, was rendered on August 31, 1981.

Article 39 (c) Step 2 of the Collective Agreement provides for the submission of grievances to Arbieration. That article is as follows:

> "Within 60 calendar days from the date decision was rendered under Step l,the General Chairman may appeal the decision in writing to the General Manager, whose decision will be rendered in writing within 60 calendar days of the date of the appeal. The decision of the General Manager shall be final and binding unless within 60 calendar days from the date of his decision proceedings are instituted to submit the grievance to the Canadian Railway Office of Arbitration for final and binding settlement without stoppage of work, except that an appeal against the dismissal of an employee which does not involve a claim for payment for time lost, may be submitted to the Canadian Railway Office of Arbitration at any time within 2 years from the date of dismissal."

The grievance in the instant case was sought to be submitted to arbitration on April 2, 1982. That was very substantially beyond the 60-day period referred to in the Collective Agreement. By Article 39 (c) Step 2, the decision of the General Manager was then the final and binding resolution of the matter, unless it is Ohe coming within the exception to that general provision, that is,unless it is a case of "appeal against the dismissal of an employee which does not nvolve a claim for payment for time lost". If it is that sort of case, then it has been referred to arbitration within the enlarged time provided.

There is no claim for payment for time lost. In my view, however, the case is not one involving an appeal against the "dismissal" of an employee, as that term is used in Article 39 (c). There is, of course, a sense in which it may be said that the grievor was "dismissed" from the Engineman's Training Program. By the same token, an employee who is demoted might be said to be "dismissed" from a particular job. But "dismissal" from a particular job or program is not the same thing as the unqualified "dismissal" referred to in Article 39 (c) where the term is, I have no doubt, used as a

synonym for discharge or termination of employment. The grievor in the instant case was not dismissed in that sense. His employment relationship was unaffected, and he returned to his former position of Trainman/Yardman.

This is not a case of appeal against dismissal, as that term is used in Article 39 (c) and indeed in ordinary language (in cases where it is used without qualification). The grievance was not, then, referred to arbitration in timely fashion. As the Collective Agreement and the Memorandum establishing the Canadian Railway Office of Arbitration make clear, the matter is not arbitrable. The grievance must therefore be dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.