CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1056

Heard at Montreal, Tuesday, April 12th, 1983

Concerning

C.P. TRANSPORT (WESTERN)
BULK SYSTEMS

and

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

EX PARTE

DISPUTE:

Claim that discipline issued (40 demerits) account incident January llth, 1982, is excessive and should be removed.

EMPLOYEES' STATEMENT OF ISSUE:

On January llth, 1982, Mr. McLean had reason to apply brakes to avoid a collision with another vehicle. The trailer jackknifed He retained control of the vehicle and did not collide with other vehicle.

The Company awarded 40 demerits.

The Union appealed - discipline excessive.

The Company declined the claim.

FOR THE BROTHERHOOD:

(SGD.) R. WELCH
System General Chairman.

There appeared on behalf of the Company:

N. W. Fosbery - Director Labour Relations, CP Transport, Willowdale

And on behalf of the Brotherhood:

R. Welch - System General Chairman, BRAC, Vancouver
Matt Krystofiak - Vice General Chairman, BRAC, Calgary

AWARD OF THE ARBITRATOR

In this case the Company raises the preliminary objection that the grievance is not arbitrable by reason of not having been processed through the grievance procedure in accordance with the time limits

set out in the Collective Agreement.

The grievor was discharged on January 12, 1982. His grievance was filed at Step 2 on January 28, 1982. The Company replied on February 5, denying the grievance. Certain further correspondence appears to have occurred on May 10 and 14, but that was not in the form of a submission of the grievance to Step 3.

It was not until January 26, 1983, that the Union sought to refer the grievance to Step 3, the General Chairman writing to Mr. Lloyd, the Company's General Manager. It may be that Mr. Lloyd was not "the highest officer designated by the Company to handle grievances", and that the grievance was not properly filed at Step 3 on that account. Perhaps the Company's practice of accepting as Step 3 references matters thus submitted to Mr. Lloyd might prevent the Company from denying that they constituted sufficient compliance with the requirements of the Collective Agreement, but that is a matter which need not be determined in this case.

Whether or not the letter purporting to refer the grievance was properly submitted to Mr. Lloyd at Step 3, it was clearly submitted more than 35 calendar days following receipt by the Union of the Step 2 decision. The Step 3 reference was, in any event made outside the time limits. The time limits are mandatory, as Article 17-B-3 makes clear. The Arbitrator would have no jurisdiction, either under the Collective Agreement or under the Memorandum establihing the Canadian Railway Office of Arbitration to hear such a grievance, and no authority to grant relief against failure to meet mandatory time limits.

Accordingly, the grievance is not arbitrable, and must be dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.