CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1293

Heard at Montreal, Tuesday, November 13, 1984

Concerning

ONTARIO NORTHLAND TRANSPORTATION COMMISSION

AND

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

EX PARTE

DISPUTE:

Appeal of Ms. L. Hardwick, Waiter, Northlander Train, whereby she was unjustly assessed 15 demerit marks, as a result of a hearing which was not considered fair and impartial.

BROTHERHOOD'S STATEMENT OF ISSUE:

The Company conducted a hearing on March 8, 1984 in connection with "Customer complaint Train 123, Friday, February 17, 1984". It was the Brotherhood's contention that the hearing was not considered fair and impartial, contrary to Article 24.5 of the Collective Agreement. It is further claimed by the Brotherhood, that it was never established that the behaviour of Ms. Hardwick was irregular to customer on February 17, 1984. We further found violation of Article 24.7, 24.8 (a) (b) and (c), 24.9 and 24.16.

FOR THE BROTHERHOOD:

(SGD.) T. N. STOL
Representative

There appeared on behalf of the Company:

A. Rotondo - Manager Labour Relations, ONR, North Bay
J. H. Singleton - Manager Passenger Services, ONR, NOrth Bay

And on behalf of the Brotherhood:

T. N. Stol - Representative, CBRT&GW, Don Mills

AWARD OF THE ARBITRATOR

Both Ms. L. Hardwick and Ms. L. Clifford were disciplined for their work performance in dealing with customers on the employer's railway. Each grieved their discipline in the ordinary course to the final level of the grievance procedure. The grievances were then referred

to CROA for final adjudication.

Article 10.11 of the collective agreement reads as follows:

> "A grievance concerning the interpretation or alleged violation of this agreement or an appeal by an employee that he has been unjustly dealt with which is not settled at Step 3 of the grievance procedure shall be submitted to the Canadian Railway Office of Arbitration for final settlement without stoppage of work in accordance with the Regulations of that office. Request for arbitration must be given within 60 days from the date of receiving a decision at Step 3 of the grievance procedure. The time limit provided in this Artrcle may be extended by mutual agreement."

The company submits that the two references to CROA are "untimely" because the trade union has not complied with Article 10.11 of the collective agreement by requesting arbitration "within 60 days from the date of receiving a decision at Step 3 of the grievance procedure". Accordingly, it is argued that I am obliged by the CROA Rules, Section 7 to dismiss the grievances because the request for arbitration was not made "in the manner and within the period provided for that purpose in the applicable collective agreement".

There is no dispute by the trade union representative that the trade union failed to comply with the 60 day time limit provided in Article 10.11 from the date of the employer's decision at Step 3. Rather, the trade union submits that the employer voluntarily extended that time limit by virtue of the last paragraph of its reply dated May 18, 1984:

> "For the purposes of the grievance procedure, you may consider this letter as our formal reply at Step 3 based on the evidence subxdtted by you to date. Should you feel that other documents in your possession will shed new light on the matter, a meeting can be arranged to review them at a mutually convenient time."

In due course a meeting between company and trade union officials took place in July 1984 with respect to the grievances. Unfortunately, the problem was not resolved at that time. Nonetheless, the trade union argued that the 60 day time limit for referring the grievances to CROA should start from the date that the meeting was held.

The trade union's submission is without merit. The company clearly placed the trade union on notice in its letter of May 18, that the letter should be considered "as our formal reply at Step 3 based on the evidence received to date". Although the company offered to keep an open mind with respect to the disposition of the grievance should further evidence be adduced, nothing that has been placed before me suggests that the company in meeting with the trade union in July,

1984 agreed to waive the sixty day time limit. Surely, the company clearly placed the trade union on notice that the time limit for referring the grievances to CROA was to commence as of the date of its May 18, 1984 reply.

Accordingly, the company's challenge to the arbitrability of the grievances is sustained and they are accordingly dismissed.

DAVID H. KATES,
ARBITRATOR.