

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1373

Heard at Montreal, Tuesday, June 11, 1985

Concerning

ONTARIO NORTHLAND RAILWAY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Discipline of 45 demerit marks assessed Brakeman D. Kirkbride.

JOINT STATEMENT OF ISSUE:

Brakeman D. Kirkbride was assessed 45 demerit marks for:

"Violation of Rule 291 and 292, U.C.O.R.,  
and exceeding restricted speed resulting  
in collision and subsequent damage to  
equipment at M.P. 86.8, Temagami  
Subdivision, on October 9, 1984."

The union appealed requesting that the discipline be reduced to 25 demerits. The company denied the appeal.

FOR THE UNION:

(SGD.) B. F. NEWMANN  
General Chairman

FOR THE COMPANY:

(SGD.) P. A. DYMENT  
General Manager

There appeared on behalf of the Company:

A. Rotondo - Manager Labour Relations, ONR, North Bay

And on behalf of the Union:

R. J. Proulx - Vice-President, UTU, Ottawa  
J. N. Hone - Research Director, UTU, Ottawa  
B. F. Newman - General Chairman, UTU, North Bay

AWARD OF THE ARBITRATOR

Articles 59.2 and 59.3 of the collective agreement impose the imperative requirement that unsettled grievances must be referred to CROA within 60 calendar days of the General Manager's reply at the third level of the grievance procedure.

The uncontradicted evidence indicated that the trade union erred in meeting that requirement. The company has refused, as it might have, to waive the mandatory time limit in order to permit the hearing of

the grievor's grievance on its merit. Moreover, the trade union acknowledged that I have no discretion to waive or extend the 60 day time limit unilaterally.

Accordingly, irrespective of the innocence of the reasons that prompted the trade union's delay in referring this grievance to CROA, I have no choice but to determine it to be inarbitrable.

DAVID H. KATES,  
ARBITRATOR.