CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1944

Heard at Montreal, Wednesday, 13 September 1989

Concerning

VIA RAIL CANADA INC.

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

The thirty demerits assessed to the record of Locomotive Engineer J.E. Fowler, 27 January 1988.

JOINT STATEMENT OF ISSUE:

Mr. Fowler was investigated on February 3, 1988 concerning an offence committed on January 27, 1988.

The Brotherhood granted an extension to the Corporation until March 10, 1988, in accordance with the prescribed time limits, thereby enabling the Corporation to inform Mr. Fowler of its decision. The Corporation issued a disciplinary form addressed to Mr. Fowler on March 15, 1988.

The Brotherhood maintains that the discipline assessed is not valid, as it was issued in violation of Paragraph 2(e) of Appendix "A" of Addendum 49 of Agreement 1.1.

The Corporation rejects the annulment of the demerit marks.

FOR THE BROTHERHOOD:	FOR THE CORPORATION:
(SGD) G. HALL	(SGD) A. D. ANDREW
GENERAL CHAIRMAN	DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

- P. J. Thivierge - Acting Director, Labour Relation, Montreal
- D. L. Brodie - Labour Relations Officer, Montreal
- J. M. Lalonde - Director, Crew Management Centre, Montreal

And on behalf of the Brotherhood Union:

- G. Hall - General Chairman, Quebec
- J. D. Pickle - General Chairman, Sarnia

AWARD OF THE ARBITRATOR

This grievance must be rejected for the reasons expressed in CROA 1696. It is to be noted that in the pleading of the its grievance in CROA 1696 the Union made no mention of Arbitrator Kates' decision in CROA 1328. Furthermore, in other cases, the same arbitrator reached a contrary decision (see CROA 1222 and 1473). This would lead me to the conclusion that the decision in CROA 1328 does not conform with the preponderance of general jurisprudence, nor with that of this Office. given the terms of the article in question. Consequently, the aim of the Brotherhood cannot be achieved except through the process of negotiation.

September 15, 1989 (Sgd.) MICHEL G. PICHER
ARBITRATOR