

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 3663

Heard in Montreal, Wednesday, 9 April 2008

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

EX PARTE

DISPUTE:

Assessment of 25 demerits to Conductor Robert Fex.

UNION'S STATEMENT OF ISSUE:

On October 20, 2005, Conductor Fex was required to attend a Company investigation in connection with circumstances surrounding: "your late arrival for work on Oct. 6/2005". Mr. Fex, subsequent to the investigation, was assessed 25 demerits.

It is the Union's position that the discipline assessed, in consideration of all the factors relating to this matter, was unwarranted but in any event, too severe. The Union is requesting the removal of the discipline from Mr. Fex's record. In the alternative, the Union requests that such discipline be commensurate to the incident.

The Company disagrees.

FOR THE UNION:

(SGD.) G. J. ETHIER
GENERAL CHAIRPERSON

There appeared on behalf of the Company:

R. A. Bowden	– Manager, Labour Relations, Toronto
B. Hogan	– Manager, Labour Relations, Toronto
G. Nadon	– Assistant Superintendent, N.O.Z.
D. S. Fisher	– Director, Labour Relations, Montreal
D. VanCauwenbergh	– Director, Labour Relations, Edmonton

And on behalf of the Union:

D. Ellickson	– Counsel, Toronto
G. Ethier	– General Chairperson, Sault Ste. Marie
R. A. Beatty	– Witness
R. Thompson	– General Chairperson, Edmonton
R. Fex	– Grievor

AWARD OF THE ARBITRATOR

The Company objects to the arbitrability of this matter. Specifically, it maintains that the Union failed to observe the time limits in progressing this matter to arbitration. On that basis it maintains that the grievance should be dismissed.

It is not disputed that the Arbitrator has a discretion, under the provisions of the **Canada Labour Code**, to waive or extend the time limits in question. However, having regard to the specific facts of this case, in a manner that should not be viewed as precedential with respect to other matters, the Arbitrator is not persuaded that the statutory discretion to extend time limits should be exercised in this grievance.

For these reasons the grievance must be dismissed.

April 14, 2008

(signed) MICHEL G. PICHER
ARBITRATOR