CANADIAN RAILWAY OFFICE OF ARBITRATION

& DISPUTE RESOLUTION

CASE NO. 4478

Heard in Edmonton, July 12, 2016

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The discharge of Conductor A. Melnykowytch for accumulation of demerits.

THE UNION'S EXPARTE STATEMENT OF ISSUE:

On or about December 18, 2015, the Company issued Ms. Melnykowytch four separate CN Form 780's which are listed below, bringing her total active discipline to 110 demerits. Ms. Melnykowytch was also issued a separate CN Form 780 advising her that she was being discharged as a result of accumulation of more than 60 demerits.

1. 15 demerits for failure to contact a Company Officer to reschedule your statement (initially scheduled for November 4, 2015) and subsequent absence without leave since November 4, 2015 to present.

2. 15 demerits for circumstances surrounding your speeding violation in a Special Dangerous Zone between Mile 274.0 and mile 261.0 Bala Sub on a Key Train while working as the Conductor on A41231 21 on October 20, 2015

3. 15 demerits for failure to comply with provisions of GOI 8.12.9 when crossing between moving Intermodal cars while working as the Conductor on Q10131 18 on October 16, 2015.

4. 10 demerits for improper procedure of repairing a hosebag in violation of GOI 8.4.6.13 and GOI 8.12.15 and the alleged violation of GOI 8.12.7 when lining a switch at BIT while working as the Conductor on train Q11131 08 on October 8, 2015.

5. 10 demerits for circumstances surrounding your time claim irregularities from March 30th to April 2nd, 2015.

The Company takes the position that the grievance relating to the submission of time claims for March 30 to April 2, 2015 is untimely. In the alternative and in any event the Union submits that the Arbitrator has the power to extend time limits pursuant to Section 60 of the Canada Labour Code and the Union further submits that this is an appropriate case for doing so.

The Union submits the Company is in violation of Articles 82, 85, 85.5 along with Addendum 124 of the 4.16 Collective Agreement and that the discipline assessed was

unwarranted but in any event to severe. The Union further submits that the Company is in violation of arbitral jurisprudence.

The Union further submits that Ms. Melnykowytch fulfilled all her employment duties consistent with normal and acceptable standards. It is the Union's position that Ms. Melnykowytch did not commit any of the violations as alleged by the Company.

The Union contends that the Company violated Ms. Melnykowytch's substantive rights as provided by the Collective Agreement and arbitral juriprudence with respect to a fair and impartial investigation as provided by Article 82 of the 4.16 Collective Agreement. The Union further contends that the Company targeted Ms. Melnykowytch for the sole purpose of discharge, this regardless of the facts thereby rendering such discipline and discharge *void ab initio.*

The Union asserts that the Company has harassed and intimidated Ms. Melnykowytch in the process of discipline and subsequent discharge, all which renders such in violation of Article 85 and as such the Company failed to exercise its right in a reasonably with respect to the issuance of such discipline and subsequent discharge all of which is in violation of the Collective Agreement's "Workplace Environment" provision, Article 85.5 of Agreement 4.16 and such discipline and discharge *void ab intio.*

For all of the foregoing it is the Union's position that Ms. Melnykowytch be exonerated of any wrongdoing, be returned to active service forthwith and that Ms. Melnykowytch be made whole, compensated all loss wages and benefits and without the loss of seniority. Additionally, given the violations of the Collective Agreement, that a Remedy, under the provisions of Addendum 123, be applied.

The Company disagrees and declines the Union's request.

FOR THE UNION:
(SGD.) J. Robbins
General Chairman

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

V. Paquet	– Labour Relations Manager, Toronto
K. Morris	– Senior Labour Relations Manager, Edmonton
G. Hare	– Superintendent, Capreol
D. Houle	– Labour Relations Associate, Edmonton

There appeared on behalf of the Union:

M. Church	– Counsel, Caley Wray, Toronto
J. Robbins	– General Chairman, Sarnia
J. Lennie	– Vice General Chairman, Sarnia
A. Melnykowytch	– Grievor, Toronto

AWARD OF THE ARBITRATOR

This arbitration concerns the dismissal of Conductor Anne Melnykowytch for accumulation of demerits.

The Grievor is an employee of twenty-six years of service with the Company, having been hired in February 1989. Over the course of her career, Ms. Melnykowytch had accumulated a total of eighty-five demerits and was also suspended once by the Company to avoid her discharge in August, 2015, for a GOI safety infraction.

The Grievor was also discharged once for administrative reasons in 2014. After an extended period of absence, she was cleared to return to work by CN's OHS Department in March 2014. Ms. Melnykowytch was required to complete the QSOC Recertification. However, she failed her first attempt at the signals and dangerous goods tests. She was given another try to rewrite those sections and passed the latter section on dangerous goods but failed to pass the former regarding signals. She was then discharged for having failed to obtain her CROR qualification, which the Union grieved. In **CROA&DR 4349**, Arbitrator Silverman allowed the grievance and stated that the Grievor was to have another opportunity to requalify. In March of 2015, Ms. Melnykowytch successfully passed her QSOC qualification and was reintegrated.

There are four incidents for which the Grievor received discipline in the case at bar, each of which will be reviewed in chronological order. I shall, however, dispose of the grievance as a whole at the end of the individual reviews. Additionally, since the fifth

grievance, concerning time claims irregularities, is subject to an objection, it will be treated separately at the end.

Ten (10) Demerits for improper procedure of repairing an air hose and failing to follow proper line a switch – October 8th, 2015.

On October 7th, 2015, the Grievor was assigned as conductor on train Q11131 08. While she was putting her train together, two supervisors, Mr. Lowe and Tipton, overheard her tell the yard crew that she had removed a damaged hose from the tail end car of her train. While the two supervisors made their way towards the Grievor, they observed her improperly lining a switch – lifting it with one hand instead of two.

Following a formal investigation of the two incidents, the Company assessed ten demerits to Ms. Melnykowytch.

CN's General Operating Instructions (GOI) 12.7 indicates that the proper way for lining hand-operated switches is by using both hands. This rule has been in effect during the twenty-six years of service of the Grievor.

The Grievor told the supervisors that she thought she had used both hands and then stated that she guessed that she had only used one hand. During the investigation she denied parts of her conversation with her supervisors, including that she had used only one hand. In the presence of the contradicting statements, I retain those of the

supervisors since they had no interest in the case when they made their statements at the time of the investigation.

As for the removal of the damaged air hose, GOI Section 8.4.6.13 states that when an activity is to be undertaken, which includes “changing any part of the knuckle/ air hose”, the employee must inform the Locomotive Engineer of the intended activity.

During the investigation, the Grievor said she did not recalled whether or not she told the Locomotive Engineer she was going to remove the air hose, but said that she told her supervisors that she had not because “[…] that is what I felt he wanted to hear because he was yelling”. Additionally, the Grievor did not conduct a Job Briefing when she encountered the broken hose. She also failed to tell the Locomotive Engineer she was going between equipment, saying she thought she did not go “in between equipment” in the literal sense.

The Grievor denied responsibility, stating that she relied on other employees “because they set the industry standards.” She also stated that she wished that CN and the Union had provided her with a “better opportunity and training to succeed at a job I love.”

Relying on **CROA&DR 3674**, the Union claims that Ms. Melnykowytch’s violation was only a technical one not worthy of discipline. In the pre-cited decision, while the

arbitrator deemed the infraction not worthy of fifteen demerits, it must be noted that the grievor had only ten active demerits at the time.

There is clearly a distinction to be made. In the case at bar, the Grievor already had fifty-five active demerits (ten of which were contested), in those circumstances, she knew or should have known that she needed to be more careful.

Moreover, the Company did not assess ten demerits to the Grievor for the sole improper switch lining, but also for the way she removed the air hose. In **CROA&DR 4193**, cited by the Company, the grievor had fifty-five active demerits and was assessed twenty more for improper detraining and lining of a switch and, even though the grievance was dismissed, the Arbitrator stated the following:

> "What of the measure of discipline? In the Arbitrator's view it would have been arguably more appropriate to assess something less than twenty demerits for the detraining and handling of the switch observed by Mr. Dale. However, even the assessment of ten demerits, standing alone, would have resulted in the accumulation of sixty demerits and placed the grievor in a dismissible position, quite apart from the additional events reviewed in respect of July 4, 2012."

It must be pointed out, however, that in the latter case, the grievor was an employee with a few years with the Company, as opposed to the present case.

The Union also claimed that the investigation regarding these two violations was not fair and impartial. I see no indication that that was the case.

For the above mentioned reasons, I consider that the quantum of ten demerits is reasonable.

Fifteen (15) Demerits for failure to comply with provisions of GOI 8.12.9 when crossing between moving Intermodal cars – October 16th, 2015.

On October 16, 2015, the Grievor was observed moving between moving intermodal equipment. Following that incident, she was brought in the Terminal Coordinator's office to discuss the violation.

The Grievor acknowledged that she crossed over the equipment while it was moving, but claimed she thought she was in compliance with the requirement. She also added that she wished she had received more training regarding that rule.

Following a formal investigation of the incident, the Company assessed fifteen demerits to the Grievor.

Regarding crossing between coupled equipment, GOI 8.12.9 states that the movement must be stopped. In a note, the same article specifies that:

> "When crossing over intermodal or other equipment equipped with crossover platforms but do not have handholds, employees must ensure the equipment is and will remain secured or when operating under your control has stopped and all slack action has ceased before crossing equipment."

It is undisputed that the Grievor failed to ensure that the equipment was stopped. Instead, she claimed that she thought that by keeping three point contact all the way across she was not in potential danger. She also said that she understood the requirements of GOI 8.12.9. However, intermodal equipment does not allow for an employee to maintain three points of contact while crossing over it. GOI 8.12.9 is not a new rule and there was never an exception allowing employees to cross over moving intermodal equipment, in fact, efficiency tests were conducted by the Company before the Grievor's absence of 2009. It is an important safety rule that the Grievor ought to be aware of.

In **CROA&DR 4193**, Arbitrator Picher, regarding infractions similar to the case at bar that led to the assessment of twenty demerits, stated that:

> "Nor am I impressed with the merits of the Union's case with respect to the incident of July 4, 2012. By placing himself between the slave power unit and the last rail car in the consist the grievor plainly violated G.O.I. section 8.12.4. That rule expressly provides as follows:
>
> When riding equipment, employees MUST ALWAYS:
>
> - unless it is the trailing car in the movement, ride the side ladder on the leading end of equipment in the direction of travel.
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> As can be seen from the foregoing, the grievor was improperly positioned at the time he was observed by Mr. Dale, was in violation of the above rule, and arguably placed himself in a position of some peril. The Arbitrator cannot accept the suggestions of the Union that in fact the grievor was riding the trailing car of the movement because he was on the rear-most car. The car he was riding was not in fact the "trailing car" as it was followed by the slave power unit which was pushing the consist. While the car may have been the last car before the locomotive power, it was clearly not a trailing car in the sense intended by Rule 12.4 of G.O.I. Section 8.
>
> In the grievor's relative short years of service he has been disciplined on a number of occasions for the violation of operating rules. At the time of the

> incident his record stood at fifty demerits. In the Arbitrator's view, even if it is accepted that the grievor did not apply the handbrake as his consist was moving, but was merely winding the slack in the chain, he nevertheless placed himself in a hazardous position contrary to the Rules. On that basis he was liable to discipline and in my view the discipline assessed was not unreasonable and should not be disturbed."

The case before me today may not involve a violation of CROR 112 and Ms. Melnykowytch is not a short term employee, but it remains pertinent in regards to the range of demerits that can be reasonably assessed to employees for violations of similar safety rules.

It should be added that Ms. Melnykowytch's explanation for her infraction is not convincing, since it is impossible for the Grievor to have used three points contact on the piece of equipment that she used to cross. Additionally, an employee of her experience cannot ignore a fundamental safety rule such as GOI 8 item 12.9., the violation of which put her safety at risk of great consequences.

Thus, fifteen demerits is reasonable and falls squarely within the scope of the jurisprudence for a similar infraction.

Fifteen (15) demerits for a speeding violation – October 20th, 2015.

On October 20, 2015, the Grievor was working as a Conductor on train A4123121, which travelled above the speed limit through the census metropolitan area of Sudbury. The train operated by the Grievor and the Locomotive Engineer was designated as a Key

Train, one carrying dangerous goods and having specific speed limits for metropolitan areas.

The Locomotive Engineer operating train A4123121 and the Grievor were assessed fifteen demerits for the incident.

Ever since the Lac-Megantic tragedy, railway companies have strengthened their concept of Key trains to ensure the safety of the public. In August 2013, the Company had issued a bulletin on the matter which was re-issued and refreshed many times over.

The Grievor acknowledged she was in violation of CROR 33 and 106. The RTC Centre contacted the crew to advise them that their train was reported travelling at 42 mph, 7 mph over the 35 mph restriction for their train.

This is the Grievor's second speeding infraction. Last time, in 2009, she was assessed twenty-five demerits for the violation.

It is true that the Grievor was not operating the train. Nevertheless, it is all crewmembers' responsibilities to ensure the train is travelling at the appropriate speed, as stated in CROR 33: "If speed requirements for their movement are exceeded, crew members must remind one another of such requirements."

The Company submitted two decisions from this Office, **CROA&DR 2951** and **4053** that respectively upheld assessments of twenty-five and twenty demerits for speeding infractions. Notwithstanding the similarities with Ms. Melnykowytch's case, there are differences worth pointing out from the case at bar: in the first case, the grievor had travelled at twice the permissible speed; in the second decision cited, the grievor was caught speeding on three different days.

However, even when those differences are taken into account, the assessment of fifteen demerits is reasonable considering the Grievor was operating a Key Train in a densely populated area, that it was her second offense of speeding and that she already was in a precarious position that should have encouraged her to be more vigilant.

Moreover, this was the Grievor's third discipline assessed in the month of October alone some seven months following her reintegration and only two months after her suspension that was imposed to avoid her termination. These prior events should have made Ms. Melnykowytch more careful and diligent in her duties.

Thus, I deem reasonable the quantum of the discipline assessed.

Fifteen (15) Demerits for Unauthorized Absence – November 4th, 2015 and following.

Following a speeding incident that occurred on October 20th, the Grievor was held out of service with pay pending the investigation scheduled for November 4th, 2015. The day prior to the investigation, Ms. Melnykowytch emailed her Supervisor, Trainmaster Lauzon, to let him know she could not attend the investigation.

The following day, Mr. Lauzon tried to contact the Grievor to reschedule the investigation, he left a voicemail and sent her an email. The Grievor acknowledged receiving the voicemail but did not explain why she did not contact the supervisor.

On November 5th, Mr. Lauzon again tried to contact the Grievor, including putting a broadcast message on the CATS system instructing her to contact the Trainmaster immediately. Company records show that Ms. Melnykowytch did see the message, as she accessed the CATS system on the 5th, but did not respond to the instruction. When asked if she saw the message, she said she did not remember its content.

On November 7, 2015, the Grievor contacted the crew office requesting that the crew dispatcher pass on a message to a fellow employee for her. The crew dispatcher then told her that Trainmaster Lauzon was looking for her, the Grievor then said: “Uh, I’m going to be in touch with him, thank you, bye”.

On November 9, Mr. Lauzon went to the Grievor's residence in an effort to contact her, but was unable to do so. The Grievor explained that she has no landline and had no way of knowing he was buzzing her. Later that same day, he sent the Grievor an email telling her to contact him immediately. The following day, Mr. Lauzon emailed the Local Chairman to advise him of his difficulties to reach the Grievor and that he would send two notices to appear express post to the Grievor. The Local Chairman did contact Ms. Melnykowytch, telling her Mr. Lauzon was looking for her.

On November 12th, she sent an email to her Trainmaster, apologizing for the late response and asking what paperwork he had for her and if he could send it via the post office.

During the investigation, the Grievor stated that she was unware of her AWOL status and claimed that her failure to contact Mr. Lauzon was due to stress and her mental state. She, however, never let the Company know about her condition.

On November 16, twelve days after she was to attend her investigation, she sent another email to Mr. Lauzon, telling him she had not received an express post yet.

After making arrangements for the 19th of November, the Grievor email Trainmaster Lauzon on the 18th to ask if he could send the paperwork via registered mail, since that would work better for her.

The 20th of November, the Company wrote to the Grievor, informing her that she will have to present herself at two formal investigations on Monday the 30th of the same month. Three days later, the Grievor emailed Mr. Lauzon, telling him she is available to meet on the 26th of November. During the investigation, she claimed that she never received the Company's letter and therefore did not present herself at the planned investigation.

Following the failure of the Grievor to present herself on the 30th, the Company sent her a final letter telling Ms. Melnykowytch that she would be required to attend her two formal investigations on December 11th. The Employer further advised the Grievor that upon failure to present herself to the meeting, her employment file would be closed.

This last attempt by the Company was successful and the Grievor emailed Mr. Lauzon on the 8th of December, telling him that she was to attend the meeting on the condition that Union Representative G. Gopsskuth be present. She confirmed her attendance the following day.

During the investigation, the Grievor explained that she could not attend the November 4th meeting because: "I felt that I can't deal with anybody or anything at that time". The Union also claims that the Grievor had sought medical attention for her issues, namely: "stress". However, despite being asked to provide it, the Grievor never sent any medical records to the Company which would justify her absence.

Throughout the events unfolding between November 4th and the date of the investigation, the Grievor never mentioned to Trainmaster Lauzon that she had medical concerns that prevented her from attending the scheduled meetings. In fact, this explanation was not provided until December 11th, the day of the investigation.

During the investigation, the Grievor, when asked if she realized it took thirty-seven days to schedule the investigation, responded that: “That looks like the evidence shows, yes.” And added: “Perhaps if a registered letter was sent sooner, the time frame would’ve been less”. It must be noted that the Company sent three registered letters to the Grievor, one on November 10th, November 20th and December 3rd. In fact, she knew since November 7th that Mr. Lauzon was looking for her after being told so by the Crew Dispatcher. Mr. Lauzon even went as far as trying to reach the Ms. Melnykowytch by personally trying to visit her at her apartment.

When asked if she had anything else to add, the Grievor stated that:

> “I am not escaping my responsibility in this regrettable situation, which put me in a AWOL status which I was unaware of, but I would like to say that if the registered mail would’ve been sent sooner, this investigation would not be needed. […] I think my work record speaks for itself in regards with the attendance management and I have not missed a day of work […]. I was visibly overwhelmed and stressed for filling a harassment complaint and going through the Oct. 26 evidence presented in the investigation which left me in a state of mind that I felt I would not be able to go through an investigation at the Company’s request. I am sorry.”

The Company provided the Grievor’s work record for the years 2000 to 2009 and it shows that she attended work only 25% of the time over that time. Additionally, the Company showed that when the Grievor was medically cleared to return to work in March

2013, the Company had similar trouble contacting Ms. Melnykowytch. It was not before they advised her that failure to contact them would result in the closure of her file that the Grievor finally contacted the Company.

The evidence reveals that Ms. Melnykowytch presented conflicting explanations to justify the delay to attend the investigation. On one hand, she claims that she was medically unable to communicate with her Employer and on the other hand, she states that the Company's ways of reaching her were inadequate and that it was the main reason for the delays. Her arguments are not convincing. The evidence reveals that, while she was well aware the Company was trying to reach her, she chose not to cooperate and not to attend the investigation.

Therefore, the quantum assessed by the Company is fair.

Discharge for accumulation of demerits.

As it has been demonstrated in the previous paragraphs, the Grievor did commit a number of violations, most which happened in the short span of a month. I consider that, taken individually, each assessment of discipline was correctly done by the Company, with the right *quantum* of demerits. Nevertheless, I find the result, namely, the discharge of a long time employee, to be unreasonable for a number of mitigating factors upon which I shall further elaborate.

The Union has put great emphasis on the Grievor's length of employment with the Company. Rightfully so, they submitted that Ms. Melnykowytch's long years of service should be considered a substantial mitigating factor. Indeed, the Grievor, before her reintegration in 2015 after her 2009 absence, had very long periods of employment without demerits assessed. The Union submitted several decisions from this Office that allowed grievances regarding the discharge of long time employees that committed similar violations as did the Grievor in this case.

Also of importance, the accumulation of violations within a short period of time and the nature of these violations must be taken into account when analyzing the proper discipline to be imposed.

The Grievor was disciplined four times for faults committed within a single month's period of time, between October 7th to November 4th. Even if I found that there was reason for discipline and that, all circumstances taken into account, the *quantum* was justified, the cumulative impact of these measures of discipline over such a short period is of concern. As Arbitrator Picher stated in **CROA&DR 3930**:

> "The issue then becomes the appropriate measure of discipline. In the Arbitrator's view concern arises with respect to the flurry of disciplinary activity visited against the grievor over a thirteen day period. The record discloses that Mr. Serediak was assessed twenty demerits for improper detraining on May 19, 2009. He was then assessed fifteen demerits for crossing tracks between them on May 26th. Only days later, on June 2, 2009, he was then assessed twenty demerits for the infraction which is the subject of this award. As he previously had twenty demerits for arising from a side collision in early 2009 Mr. Serediak placed himself in a dismissible position by reason of accumulation of demerits.

> The Arbitrator shares the Company's perspective of concern for what appear to be repeated safety infractions on the part of the grievor. However, consideration must be given as to whether the cumulative impact of these measures of discipline over such a short period is inconsistent with the application of rehabilitative principles which are meant to underline the Brown system of industrial discipline. While I recognize that the grievor cannot invoke lengthy service as a mitigating factor, as a relatively junior employee he should nevertheless be entitled to the opportunity to benefit from the assessment of discipline and the corrective value it can have."

Progressive discipline serves as a warning system, making the employee aware that in the absence of change, the employer will be more and more severe, up to the termination of the employee. In the case at bar, the accumulation of violations within a short period appears to be inconsistent with such objectives, especially when the relatively minor nature of the majority of the infractions are taken into account[1]. In a similar case, the grievor was reinstated:

> "The material before the Arbitrator confirms that by reason of three minor incidents the grievor, an employee of twenty-six years' service, was discharged. On June 21, 2010 he was observed kicking a draw bar while attempting to align it to couple two cars. It is also suggested that on that occasion he stood between two cars which were less that fifty feet apart. That incident drew as assessment of nineteen demerits.
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> The second incident concerns two procedural errors committed by the grievor on February 10, 2011. Firstly, he was observed by Trainmaster Larry Karn of MacMillan Yard detraining a locomotive by descending the stairs in a forward facing position rather than facing the locomotive itself and descending the steps backwards. On the same tour of duty he was further observed throwing a switch with one hand rather than two, while he held his radio in the other hand. Following an investigation he was assessed twenty demerits for those infractions.
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> I am satisfied that the discharge of the grievor is excessive given the relatively minor nature of each of the infractions here examined. As has been previously recognized in this Office, in substance the grievor's actions do not

[1] Concerning her speeding violation, it should also be mentioned that the Grievor was not in control of the train during the incident.

> involve flagrant violations of safety rules and procedures so much as a failure to follow best practices. In my view there were errors of judgement committed both by the grievor and by the Company."[2]

In the present matter, the grievor was clearly, before the month of October 7th 2105, on the edge of dismissal and she knew, or should have known, that she had to improve her working habits. Nevertheless, the last string of infractions that led to her dismissal are relatively minor and, considering the relatively short period during which they occurred, the dismissal appears unjust and inconsistent with the jurisprudence.

Even if I am not impressed with the tendency of the grievor to blame the Company or others for her faults, I cannot conclude that there is no space for improvement on her part and that she cannot work safely, especially when I consider all those years during which the grievor was not disciplined.

Notwithstanding the previous mitigating factors, I must emphasize on the Grievor's weak explanations regarding her AWOL status and her failure to show up for her investigation. The behavior shown by Ms. Melnykowytch is highly inappropriate and, taken with all other violations, commends a proportionately severe measure of discipline, just short of discharge.

This allowance of the grievance should be clearly understood by the Grievor as a last chance to improve her behavior and attentiveness at work and should not be viewed

[2] **CROA&DR 4098**

as an implicit approval of the violations she committed, nor a denial of her responsibility. She has had periods free of discipline in the past and should conduct herself as such.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator directs that the grievor be reinstated into her employment forthwith, without loss of seniority. The fifty-five demerits are to be removed from her record and the period between her termination and reinstatement is to be registered as a suspension for her infractions.

Objection of the Employer regarding the timeliness of the 5th grievance (time claim irregularities).

The Employer objected to the Union's grievance for the assessment of ten demerits for the Grievor's time claim irregularities, claiming it was untimely.

The facts surrounding the assessment of demerits by the Company are of little importance for the objection raised before me. Suffice to say that between March 30th and April 2nd, 2015, the Grievor made some time claims that were deemed worthy of discipline by the Company, which assessed ten demerits to Ms. Melnykowytch.

The Union then filed a Step 3 grievance on August 2, 2015, demanding that the discipline be removed from her record or that it be significantly reduced. The Company having refused to do so on November 20th, 2015, the Union announced their intention to

arbitrate the grievance on January 12, 2016. However, no further actions were taken on the file until March 30, 2016, when the Union submitted its Exparte Statement of Issue.

It is undisputed that the inclusion of the grievance was six weeks late and in contradiction with Section 84.4 of the Collective Agreement. Nonetheless, the Union demands an extension of time in accordance to Section 60 (1.1) of the Canadian Labour Code, which reads:

> "60 (1.1) The arbitrator or arbitration board may extend the time for taking any step in the grievance process or arbitration procedure set out in a collective agreement, even after the expiration of the time, if the arbitrator or arbitration board is satisfied that there are reasonable grounds for the extension and that the other party would not be unduly prejudiced by the extension."

To support of its claim, the Union submitted **CROA&DR 4017** in which Arbitrator Picher granted the hearing. The main motivation, however, was that a refusal to do so would have resulted in the Grievor's discharge. This is not the case here: Ms. Melnykowytch, at the time of the assessment, had a total of forty-five active demerits. This means that the discipline assessment of ten demerits, would not result in her discharge.

Section 60 (1.1) of the *Canadian Labour Code* is a measure which is used only exceptionally, when the circumstances require it. The Union has given no reasonable explanation for the untimeliness of its grievance. The jurisprudence on the matter is clear[3] and supports the Company's position, in the event of the failure to respect Section 84.4

[3] See, amongst others, **CROA&DR 1233**, **1799**, **3788**, **3789**, **3790**.

of the Collective Agreement, the time limits that the parties agreed upon must be respected. Otherwise, as is the case here, the objection will be granted.

For the foregoing reasons I am satisfied that it is not appropriate to exercise my discretion to allow an extension of time limit. Thus, the objection is granted.

October 13, 2016

MAUREEN FLYNN
ARBITRATOR