IN THE MATTER OF AN ARBITRATION

BETWEEN:

UNITED STEELWORKERS OF AMERICA, Local 5890,

(Hereinafter referred to as the "Union")

AND:

IPSCO SASKATCHEWAN INC.

(Hereinafter referred to as the "Company")

INTERIM AWARD

SOLE ARBITRATOR: Kenneth A. Stevenson, Q.C.

COUNSEL: Bill Craik
On behalf of the Union

Larry LeBlanc
On behalf of the Company

INTERIM AWARD

This matter was heard on October 27, 1998.

The parties acknowledged that the Arbitration Board was properly constituted and had jurisdiction to hear and determine the Grievance of Wesley Gushel (herein the "Grievor") filed on August 2, 1996 in respect of his discharge from employment with the Company. At the commencement of the hearing, the Company advanced a preliminary objection to the arbitrability of the grievance. The parties agreed to call witnesses and evidence relevant to the preliminary objection and requested that I make an interim award in respect of the arbitrability of the grievance and retain my jurisdiction in respect of all other issues raised by the grievance.

The Company's preliminary objection to arbitrability is two fold. First, the Company says that the Grievor failed to comply with specific mandatory time limit provisions of the Collective Agreement for filing and processing his grievance. Secondly, the Grievor and/or the Union is guilty of undue delay in the processing of the grievance to arbitration and therefore the grievance should not be allowed to proceed to arbitration.

BACKGROUND

The essential background and factual circumstances to the preliminary objection are not seriously in issue. On the preliminary objection, the Board heard evidence on behalf of the Company from Grant Shortridge, the Director of Personnel for the Company's Tubular Division. On behalf of the Union, we heard evidence from Michael Krushlucki, past president of the local and Michael Geravelis, Staff Representative for the USWA. We also heard brief rebuttal evidence from Jack Mathieson.

Facts relevant on the determination of the preliminary objection include the following:

1. The Company discovered what it believed to be 3 marijuana plants growing in a garden plot at the Company's premises; the plot was being used by the Grievor.

2. On August 1, 1996 following a disciplinary meeting, the Company informed the Grievor of the immediate termination of his employment. On August 2, 1996, the Company wrote to the Grievor confirming this termination of his employment.

3. On August 2, 1996, the Grievance was filed in respect of this termination of employment. In accordance with the Collective Agreement, the Grievance was presented at Step 3 of the grievance procedure.

4. The Step 3 grievance meeting was held on August 19, 1996. The Company's reply to the Step 3 meeting was by way of a letter dated September 12, 1996 from Mr. Shortridge to Mr. Krushlucki. The letter advised of the Company's decision to uphold the decision to terminate the Grievor's employment.

5. On September 12, 1996, Mr. Krushlucki wrote Mr. Shortridge a letter as follows:

> *Re: Wes Gushel Termination Grievance Number 96-024-03*
>
> *Attention: Grant Shortridge*
> *Please be advised that the Union wishes to refer the above grievance to arbitration.*
>
> *We are requesting that this be put to expidited (sic) arbitration.*
>
> *Please respond as to your position on the above.*
>
> *Thank you.*

6. On September 13, 1996, Mr. Shortridge replied to Mr. Krushlucki's September 12th letter as follows:

> *Re Grievance #96-024-03, Wesley Gushel - Termination*
>
> *With regards to your fax dated September 12, 1996, your request for expedited arbitration is denied. Yours truly,*

7. The Company completed the required paperwork in respect of the termination of the Grievor's employment and paid outstanding salary and benefits.

8. On March 19, 1997, Mr. Krushlucki wrote to Jim Clark of the Tubular Division the following letter:

Re Wes Gushel Termination

The above grievance has previously been referred to arbitration. Please Contact the Union with regard to setting a date for a hearing. Thank you.

9. On March 25, 1997, Mr. Clark replied as follows:

I am not aware of this grievance being previously advanced to arbitration. Please direct inquiries or correspondance concerning this matter to Grant Shortridge.

10. On October 7, 1997, Mr. Geravelis wrote to Mr. Shortridge the following letter:

Re Wes Gushel Arbitration

At our information meeting of September 17th during which an informal discussion took place on the above-mentioned case, it is our opinion that this case was forwarded by letter to the Company on September 12th, 1996, with referral to proceed to arbitration. In the next instance it was asked if the Company was willing to go to expedited arbitration with this case, which is covered by Appendix "D" of the collective agreement, and the Company denied the request. It is our strong opinion that because you denied the expedited arbitration, it does not negate the fact that our request in our letter of September 12th, in particular, the first sentence, talks about arbitration. So it remains, therefore, that since you denied expedited arbitration, the next move would be for you to schedule it for regular arbitration in accordance with Article 7.02. I agree that a lengthy time has elapsed in this matter but that is not abnormal for the Company and the Union to take an unusually long time between the referral to the actual scheduling of the arbitration dates. We have many cases which follow the same pattern in both the Pipe and Steel Divisions. It is, therefore, imperative that we schedule a mutually satisfactory date in which to arbitrate and resolve this matter, being the Wes Gushel termination.

After checking over the list of arbitrators, in accordance with Article 7.02 of the agreement, I believe Dan Ish is the next arbitrator in rotation and he should be contacted immediately for available dates. Please advise me of who will be representing the Company in this arbitration so that we can confirm a date as quickly as possible.

11. On May 21, 1998, Mr. Bill Topp, the newly elected President of Local 5890 wrote to Mr. Shortridge the following:

Please be advised that the Union cannot agree with the Company's decision on this grievance and will, therefore, be proceeding to the next step which is Arbitration.

Please comply by making arrangements for a hearing with the next Arbitrator on the rotation list as expediently as possible. Please advise at your earliest convenience. Thank you.

12. On June 26, 1998, Mr. Shortridge replied to Mr. Topp's letter as follows:

I am in receipt of your letter dated May 21, 1998, requesting arbitration in this matter.

I wish to advise you that I will begin the necessary steps in the process. However, you are aware and have been advised verbally, the Company shall proceed to arbitration to determine first of all if the matter is arbitrable. We consider the grievance to be out of time and/or barred by undue delay. If the matter is determined to be arbitrable, we shall proceed with the termination aspect.

RELEVANT PROVISIONS OF THE COLLECTIVE AGREEMENT

Article 5.01 -- Disciplinary Action

Management shall not take disciplinary action without first discussing this issue with the employee, unless the circumstances justify immediate suspension or discharge. In the event of a claim that an employee has been discharged or indefinitely suspended unjustly or unreasonably, the grievance shall be filed at Step Three of the Grievance Procedure and a meeting held at Third Stage within five (5) working days. Claims that an employee has been unjustly or unreasonably suspended for a set period of time shall be filed at Step Two of the Grievance Procedure and a meeting held within seven (7) working days.

Article 6.02

Step Three –
If no settlement is reached in Step Two, the Grievance Committee representatives from Union and Management will meet to discuss the complaint within forty-five (45) days from the date the grievance is referred to 3rd stage. If the grievance is not then settled, thun(sic) at the request of either party to this Agreement, the grievance may be referred to arbitration. All answers to Step Three of the grievance procedure shall be in writing within fifteen (15) calendar days of such Step Three meeting.

Article 6.04 – Time Limits

(a) Grievances must be submitted within ten (10) calendar days of the alleged dispute or there is no grievance.

(b) Grievances not processed to the next stage within fifteen (15) calendar days after a reply has been received, shall be considered as having been dropped.

(c) Extensions of time limits may be agreed to verbally between the parties involved in the particular grievance.

Article 7 - Arbitration

Article 7.01

Where a difference arises between the parties relating to the interpretation, application or administration of this Agreement, including any question as to whether a matter is arbitrable, or whether an allegation is made that this Agreement has been violated, either of the parties may, after exhausting the grievance procedure established by this Agreement, notify the other party in writing of its desire to submit the difference or allegation to arbitration.

The parties agree that within ten (10) days of the receipt of such notice, an arbitrator shall be selected in the manner outlined in Article 7.02 and the arbitrator jointly advised of his selection.

Article 7.06 – Expedited Arbitration

(a) If no settlement is reached in Step Three of the Grievance Procedure, the Chairman of the Local Union Grievance Committee may appeal it to Expedited Arbitration Procedure (Appendix D) by notifying the Plant Manager within seven (7) days of receipt of written answers from the Company representatives. If the Company and Union plant representatives agree that the issue should be handled in Expedited Arbitration, it should proceed as follows:

REVIEW OF EVIDENCE

The various correspondences previously referred to were entered in evidence through Mr. Shortridge. Mr. Shortridge testified that between September 13, 1996 and March 1997, there had been no mention of the grievance to the Company by the Union; also during this period of time no letter or request had been received to select an arbitrator. The Company considered that the

Grievance had run its course and had gone away. Mr. Shortridge's evidence was that prior to the March 19, 1997 letter, Mr. Clark had not previously been involved in the Gushel grievance and there were no further inquiries or correspondence from the Union to Mr. Shortridge subsequent to Mr. Clark's March 25, 1997 letter.

Mr. Shortridge acknowledged that at the September 17, 1997 meeting with Mr. Geravelis, the Gushel grievance was discussed. Mr. Shortridge advanced his position that the grievance had been dropped and that no arbitration was pending. Mr. Geravelis' position was that the grievance was not dropped and that it should proceed. Mr. Geravelis reiterated his position in the October 7th correspondence; the Company did not agree with the Union position. Mr. Shortridge says that the next communication he had from the Union was Mr. Topp's letter of May 21, 1998.

Mr. Shortridge acknowledged that although a Step 3 meeting for a dismissal grievance meeting is to be held within 5 days, the actual scheduling of the meeting will depend upon the availability of the parties including Union representatives; there are often verbal extensions. In respect of the Gushel grievance, a Step 3 meeting was not held until August 19 whereas the Collective Agreement required it to be held within 5 days of August 2nd. The time for the Company's response at Step 3 is 15 days; in this case, the Company's response was not given until September 12th, 23 days after the Step 3 meeting. Apparently there had been no discussion or agreement to specifically extend this time limit. Mr. Shortridge testified that he considered that the September 12th letter was a request for expedited arbitration and not a submission to the normal arbitration process. Mr. Shortridge's evidence was that his September 13th response denying the Union's request for expedited arbitration fully addressed the Union's request and that he thought the Union, if they intended to proceed with the grievance, would then make a request for regular arbitration procedure. It was Mr. Shortridge's belief that when there is a request for arbitration, the Company, along with the Union staff rep generally schedule the arbitration with the arbitrator assigned from the rotation. Mr. Shortridge acknowledged that in the Fall of 1996 there was preparation for and negotiations with the Union in respect of extending the contract and that negotiations may have taken in excess of two months. He further acknowledged that there was a change in the Union presidency in the Spring of 1997.

Mr. Krushlucki has been employed at Ipsco since March 1967 and has been a member of the local executive for 27 years including 9 years as President ending in April/May, 1998. Mr. Krushlucki testified that the time for the handling of a grievance after its initiation is widely variable; frequently the time for the Company to reply following Step 3 could vary from a few days to a few months. Mr. Krushlucki's evidence was that following the Company's Step 3 answer, the Union can submit a request for arbitration which must be in writing, however, there is no prescribed form. Mr. Krushlucki testified that his letter of September 12 was written for the purpose of referring the Gushel grievance to arbitration with the additional request for expedited arbitration if the Company would agree; however, if the Company did not agree, the matter would proceed through the regular arbitration procedure. Mr. Krushlucki testified that his letter was written after discussions of the grievance at the Union Executive and Grievance Committee level and for the purposes of processing the grievance to arbitration. Mr. Krushlucki's evidence is that after having reviewed the outstanding grievances, he wrote the March 19th letter to Mr. Clark because he believed that Mr. Clark would be the person to deal with this grievance. On the same date, Mr. Krushlucki wrote a second letter to Mr. Clark in respect of two other grievances at Step 3 of the grievance procedure. Mr. Krushlucki testified that there are regularly verbal agreements to extend time limits.

It was Mr. Krushlucki's evidence that the Company has always taken the initiating steps to select an arbitrator including advice to the Union as to who should be selected. If there is a dispute, it is sorted out between the parties, otherwise the Company will notify the arbitrator of his appointment. Mr. Krushlucki testified that during the Fall of 1997, he was responsible for the development of the Union proposal for bargaining and involved in the bargaining which commenced in December 1997. Mr. Krushlucki was unsuccessfully involved in the election for Union President in March/April 1998.

Mr. Geravelis has been a staff representative for the Union for in excess of 21 years and has responsibility for a territory which includes the Ipsco plant. Mr. Geravelis testified that he was aware of Mr. Gushel's termination and he believed that he attended at the Step 3 meeting. He was aware of the Company's reply and the Union's September 12th letter in respect of

arbitration. It was his evidence that it is not uncommon for the Company and the Local to discuss what might be required to resolve the grievance. Following Step 3, Mr. Geravelis' next involvement was September 1997 when, at a meeting with Mr. Shortridge, he informed the Company of the Union's position in relation to the grievance including its belief that the matter had been submitted to arbitration and he wished to have it advanced to an arbitration hearing. Following the September 17th meeting he wrote the letter dated October 7th setting out the Union's position including the Local's desire to have the case proceed to arbitration. Mr. Geravelis testified that he did not receive a response to his October 7, 1997 letter. Mr. Geravelis believed that he had other discussions with the Company representatives including Mr. Shortridge and Mr. Doug Simon, but he was unclear as to dates or circumstances.

POSITION OF THE PARTIES

Company Position

On behalf of the Company, Mr. LeBlanc takes the position that the Union failed, within the mandatory time established by the Collective Agreement, to refer the grievance to regular arbitration. It is the Company's position that Mr. Krushlucki's September 12, 1996 letter is a request for the expedited arbitration procedure. Since the Company did not agree to the procedure and it notified the Union accordingly on September 13th, it was then incumbent upon the Union to refer the matter for regular arbitration. Mr. LeBlanc asserts that Mr. Krushlucki's September 12th letter cannot be read as a reference to regular arbitration. This is so in view of the substantial differences in procedure and cost associated with the two arbitration procedures. Mr. LeBlanc says that the context of the letter requires that it be determined as a request for expedited arbitration procedure. He submits that it would not be reasonable to assume that the Union wanted regular arbitration when they had asked for expedited. He suggests that further support for this interpretation can be found in the Union's subsequent conduct when it did not push this matter forward to arbitration. Mr. LeBlanc asserts that because the expedited arbitration is substantially different procedurally and in forum that a specific request for either regular or expedited is required.

It is the Company's position that the time limits in the Collective Agreement are mandatory. The Union had 15 days (Article 6.04) after the Company's Step 3 answer on September 12th, to notify the Company in writing of its desire to submit the Gushel grievance to arbitration. The Company says that since there was no referral to arbitration by reason of the application of Article 6.04(d), the grievance *"... shall be considered as having been dropped."*

Mr. LeBlanc acknowledges that this Board has the power pursuant to Section 25(2)(f) of *The Trade Union Act*, R.S.S. 1978 c. T-17 (the "*Act*") to relieve against a breach of time limit set out in the Collective Agreement. That section reads as follows:

> *'25(2) Any arbitrator or the chairperson of an arbitration board, as the case may be, may:*
>
> > *(f) relieve, on terms that, in the arbitrator's opinion, are just and reasonable, against breaches of time limits set out in the collective bargaining agreement with respect to a grievance procedure or an arbitration procedure;'*

Mr. LeBlanc asserts that to grant relief from mandatory time limits is an extra-ordinary event for which the Union bears the burden of showing proper circumstances. Mr. LeBlanc referred the Board to the decision of Arbitrator Greyell in *Re: Nelson and District Credit Union and IWA-Canada, Loc. I-405* (1998), 71 L.A.C. (4th) 333, where he enumerated a number of factors that should be considered in determining whether there should be relief against a breach of mandatory time limits pursuant to a provision such as Section 25(2)(f). At page 340, Arbitrator Greyell quotes from Arbitrator Munro as follows:

> *In my view, a determination of whether the burden under Section 98(e) has been satisfied should proceed on the following considerations: (a) the degree of force with which the parties have given contractual expression to the time limits: (b) whether the breach of the time limits was in the early or later stages of the grievance procedure; (c) the length of delay; (d) whether the applicant for relief has a reasonable explanation for the delay; (e) the nature of the grievance—i.e, the impact on the grievor of a refusal to grant relief against the time limits; (f) whether the employer would suffer prejudice by the granting of such relief; and (g) any other factors peculiar to the circumstances at hand.*

Addressing these factors, Mr. LeBlanc asserts that the parties have used forceful contractual language in respect of time limitations and that effect should be given to these since the Union's breach of the mandatory limits was at an early stage in the process followed by a substantial unexplained delay of 20 ½ months between September 13, 1996 and May 21, 1998.

Mr. LeBlanc recognizes that a refusal to grant relief will mean that the Grievor will not have an opportunity to proceed with the merits of his grievance, but submits that the Company would suffer prejudice if relief was granted. It is asserted that prejudice can be inferred from the delay and found in the potential issue of back pay. The Company has a concern as to the message for work place safety if a reinstatement were to occur a lengthy time after discipline for a drug-related offence.

The Company asks the Board to find that by reason of the Union's undue delay in pursuing the grievance, the right to pursue the grievance should be barred. Section 25(2)(g) of the *Act* provides as follows:

> *25(2) An arbitrator or the chairperson of an arbitration board, as the case may be, may:*
>
> > *(g) dismiss or reject an application or grievance or refuse to settle a difference if, in the opinion of the arbitrator or the arbitration board, there has been unreasonable delay by the person bringing the application or grievance or requesting the settlement and the delay has operated to the prejudice or detriment of the other party.*

Mr. LeBlanc asserts that there has been both unreasonable delay and detriment to the Company as a result of the Union's failure to take any steps to have the matter brought to arbitration subsequent to September 13th, 1996 until May 21st, 1998. Mr. LeBlanc asserts that it is the Union's obligation to see that the Grievance is moved forward to arbitration and to ensure that the arbitrator has been appointed. While the parties may jointly decide who is next in the rotation of arbitrators, the Company traditionally sends a letter to the arbitrator.

Union Position

On behalf of the Union, Mr. Craik's position is that the Union fully complied with the time limits. He submits that the letter of September 12th, on its plain wording, is a referral of the grievance to arbitration coupled with a request that if the Company agreed, the matter should proceed by way of expedited arbitration. Mr. Craik asserts that if the Company misread or misinterpreted the document, it is their responsibility, not something for which the Union should be responsible. Mr. Craik acknowledges that subsequent to September 13th, neither the Company nor the Union took any steps to have the matter brought to arbitration. Mr. Craik's position is that the onus is not only that of the Union to see that the an arbitrator was appointed, but also the obligation of the Company. Mr. Craik draws the Board's attention to the fact that the request for arbitration on September 12th was delivered on the same day as the Company provided its Step 3 reply.

Mr. Craik asserts that the Union is the only party who took steps to have the Grievance proceed to arbitration. The initial step was taken on March 19th when Mr. Krushlucki wrote to Mr. Clark referring to the fact that the grievance had previously been referred to arbitration and asking that the Union be contacted with regard to setting a date for a hearing. A further step to promote the matter to arbitration was the discussions between Mr. Geravelis and Mr. Shortridge on September 17th, 1997 wherein the Union took the position that the matter had been referred to arbitration and requested that the Company schedule the matter for regular arbitration. Mr. Craik reminds the Board that subsequent to September 12, 1996, it had consistently been the Union's position that a request for arbitration had been made and the Company should now initiate steps to select the arbitrator. Mr. Craik suggests that delay in this matter is really the responsibility of the Company. He says that following the request for arbitration on September 12th, 1996, and notwithstanding inquiries of Mr. Krushlucki on March 19th, 1997, and Mr. Geravelis' letter of October 7, 1997 the Company took no steps to move the matter to arbitration or to respond to the October 7th letter.

Mr. Craik's position is that while Section 25 of *Act* provides a basis upon which the Board may grant relief in respect of a failure to comply with mandatory time limits this Board

need not rely upon that section as the Union has fully complied with time limits. In the alternative, should this Board conclude that there had been a failure to comply with the time limits, Mr. Craik submits that on these extreme facts, having regard to the September 12th letter and the Union's understanding that the matter had been submitted to arbitration, that the Board ought to provide relief from the time limits on terms which the Board considers to be just and reasonable.

DECISION

I must first decide whether or not the Union failed to comply with the provisions of the Collective Agreement for processing the Grievance to arbitration after Step 3 of the grievance procedure. No objection has been taken to the processing of the Grievance prior to the Company's answer at Step 3 made by Mr. Shortridge on September 12, 1996 advising of the Company's decision to uphold the Grievor's termination. The Union had the option to either accept the Company's Step 3 answer, or to refer the matter to arbitration (Articles 6.02 and 7.01). Pursuant to Article 6.04 (b), the Union had 15 calendar days after receipt of the Company's reply to process the Grievance to arbitration. If a grievance is not processed within 15 calendar days, the Collective Agreement provides that the grievance... *"shall be considered as having been dropped."* It is clear that the language of Article 6.04 expresses a mutual intent to process grievances through the grievance process in a timely manner. The language is clearly mandatory. The Company takes the position that Mr. Krushlucki's letter of September 13th is not a referral to arbitration, but rather a referral or request for expedited arbitration, pursuant to Article 7.06. Mr. LeBlanc says that since the Company did not agree to expedited arbitration, and there was no further referral to arbitration within the 15 day period, that this Board should conclude that the Grievance was "dropped".

I am satisfied that Mr. Krushlucki's September 12th letter is a referral to arbitration within the meaning and application of Articles 6.02 (Step 3) and 7.01. I have reached this conclusion on the basis that it is the clear and unambiguous meaning of Mr. Krushlucki's September 12th letter wherein Mr. Krushlucki writes, *"Please be advised that the Union wishes to refer the*

above grievance to arbitration." I conclude that Mr. Krushlucki's request that the grievance be put to expedited arbitration does not limit the request to one for only expedited arbitration. The expedited arbitration procedure is only available if the parties agree that it should be handled by that procedure. Here the Company did not agree. In my opinion, the fact that the Company did not agree to the Grievance being handled by the expedited arbitration procedure did not change the fact that the Union, in its September 12th letter, advised the Company of its wish for the Grievance to be referred to arbitration. I conclude that Mr. Krushlucki's September 12th, 1995 letter is a referral to arbitration which complies with the time limit requirements of the Collective Agreement.

This conclusion is supported by the consistency of the Union position including Mr. Krushlucki's evidence of the Union's intent to grieve the dismissal as well as Mr. Krushlucki's letter of March 19, 1997. This letter is the first communication between the Union and Company concerning the Grievance subsequent to Mr. Krushlucki's September 12th letter and the Company reply on September 13th. In this first communication, the Union confirms its understanding that the Grievance had been referred to arbitration. I accept Mr. Krushlucki's evidence that the prior referral to arbitration was a reference to his September 12th correspondence. I attach no particular significance to the fact that Mr. Krushlucki's March 19th letter was addressed to Jim Clark, who had not previously been involved in respect of the Gushel Grievance. On March 19th, Mr. Krushlucki also wrote to Mr. Clark in respect of two other grievances. Mr. Clark, in his March 25th reply, advised that he was not aware that the Grievance had been previously advanced to arbitration and advised Mr. Krushlucki to direct correspondence or inquiries to Grant Shortridge. This reply was copied to Mr. Shortridge.

I must also determine whether or not the Grievance is inarbitrable due to the Union's delay generally in processing the Grievance to arbitration. The Company relies upon Section 25(2)(g) of the *Act*. Mr. LeBlanc argues that there has been unreasonable delay in bringing the application for arbitration and the delay operated to the prejudice or detriment of the Company.

Has there been unreasonable delay by the Union in bringing the application for arbitration? For the reasons outlined, I have concluded that the Union notified the Company in

writing on September 12th, 1996 of its wish to refer the Grievance to arbitration. It is necessary to review what occurred between September 12th, 1996 and the actual processing of this matter to arbitration to determine whether or not there has been an unreasonable delay by the Union in bringing the Grievance to arbitration.

The evidence is that in the past where there has been a request by the Union to refer a grievance to arbitration, the practice has been for the Company to discuss with the Union the selection of an arbitrator. Article 7.01 provides for the selection of an arbitrator within 10 days of the Company's receipt of notice by the Union of its desire to submit the difference to arbitration. Selection of the arbitrator is by rotation as provided in Article 7.02. Where there is agreement as to the arbitrator, the Company traditionally has notified the arbitrator of his appointment and scheduling is done in consultation with a representative of each of the parties. Article 7.01 provides for the arbitrator to be jointly advised of his selection. On the evidence, it appears that in practice, the parties have not held to the requirement to select an arbitrator within 10 days and such practice appears to have been acceptable to both parties.

Following the referral to arbitration on September 12th, 1996, the Union took no further steps to select the arbitrator or to advance the Grievance to arbitration for a period of 6 months. On March 19th, 1997, Mr. Krushlucki requested the Company to contact the Union with regard to setting the date for a hearing. Mr. Clark responded that Mr. Krushlucki should deal with Mr. Shortridge; a copy of this correspondence was forwarded to Mr. Shortridge. There is no evidence that the Union, at this time or shortly thereafter, contacted Mr. Shortridge. The evidence of this matter having been next substantively discussed between the parties was at the September 17th meeting between Mr. Geravelis and Mr. Shortridge. At that meeting the Union again advanced its position that the Grievance had been referred to arbitration by its letter of September 12th, and further took the position that the next step was for the Company to schedule the arbitration. Mr. Krushlucki acknowledged that a lengthy time had elapsed but it was his position that it is not abnormal for the Company and Union to take an unusually long time between referral and the actual scheduling of arbitration dates. At that time, it was the Union position that it was imperative to schedule dates for the arbitration and stated its belief that the arbitrator should be Dan Ish, who the Union proposed should be contacted immediately for

available dates. There is no evidence that the Company responded to this October 7th letter stating the Union's position and requesting that a hearing be scheduled.

On the evidence, it appears that nothing further was done by the Union or the Company to have the Grievance advanced to arbitration until Mr. Topp's letter of May 21st, 1998. In this correspondence, Mr. Topp advised the Company that the Union did not agree with the Company's decision on the Grievance and confirmed that the Union would be proceeding to arbitration. Mr. Topp requested Mr. Shortridge and the Company to make expedient arrangements for a hearing with the next arbitrator on the rotation list and to advise in this regard at its earliest convenience. The Company responded on June 26th advising that it would begin the steps in the process and confirming the Company's position that it wished first to determine if the matter was arbitrable. The Company's position, both then and at the hearing, was that Mr. Topp's May 21st letter was the Union's first request for arbitration by the regular arbitration procedure.

The Company's position is that the letter of September 12th, 1996 was not a referral to the regular arbitration procedure so it was not obligated to take any steps to advance this matter to arbitration. This is an explanation as to why the Company took no steps to refer the matter to arbitration prior to Mr. Krushlucki's March 19th correspondence. However, upon receipt of this correspondence, the Company was aware that it was the Union's position that the Grievance had been advanced to arbitration. Notwithstanding this knowledge, the Company took no steps to advance the matter to arbitration either at that time or subsequent to the September 17th meeting, or after the October 7th letter, wherein the Union position was confirmed and the Company was asked to take steps to advance this matter. The Company did not respond to Mr. Krushlucki's statements about unusually long delays, or to the Union's position on the referral to arbitration.

It is my opinion the initial delay (between September 12th, 1996 and March 19th, 1997), arose as a result of the Company's misapprehension of the effect of the Union's September 12th, letter and the Union's view that there was nothing unusual about the delay in selecting the arbitrator because of its belief that it was not abnormal for the Company and Union to take unusually long between a referral and scheduling of an arbitration. The practice was for the

Company to initiate the process by confirmation of who would be the arbitrator and to provide notice to the arbitrator. In this case, no steps were taken by the Company as it was acting on a belief that the matter had not been referred to arbitration. During this time, the Union believed it had referred the matter to arbitration, but did not pursue the selection of an arbitrator; it considered this not to be unusual.

The March 19th, 1997 correspondence notified the Company of the Union's position that the Grievance had previously been referred to arbitration. No steps were taken around this time by either the Union or the Company to advance the matter to arbitration. There is evidence that there were informal discussions between Union and Company throughout this period, but no clear evidence that either party took any steps to advance the matter. The Board is satisfied that at the meeting of September 17th, 1997 and confirmed by the October 7th letter, the Union again made its position known to the Company. However, neither the Company nor the Union took any further steps to advance this matter to arbitration until May 21st, 1998, when Mr. Topp wrote to Mr. Shortridge advising that the Union would be proceeding to arbitration and requesting that arrangements be made for the arbitrator and the hearing. The Company responded on June 26th.

I have concluded that the Union notified the Company on September 12th, 1996 of its desire to submit the matter to arbitration. Compliance with the Collective Agreement would have resulted in the selection of an arbitrator within 10 days of September 12th. There was substantial delay in the selection of an arbitrator. In my opinion, the responsibility for that delay must be attributed to both the Union and the Company. During the first six months, the Union took no steps to advance the matter to arbitration. During this period the Company's explanation for not taking the action is that it was unaware that the matter had been referred to arbitration. By March 19th, 1997, the Company was aware that it was the Union's position that this matter had been referred to arbitration. Article 7.01 required the parties to select an arbitrator within 10 days of notice of the referral to arbitration. Clearly, this was not done.

It is the Company's position that there was no referral to arbitration until May 21st, 1998. I have determined that there was in fact a referral to arbitration as of September 12th, 1996 and that in March, 1997, the Company had knowledge of the Union's position that there was a

referral. After referral, there is a joint onus on the parties to have this matter referred to arbitration. In these circumstances, and having regard to the practice for processing grievances to arbitration, I am not prepared to conclude there was an unreasonable delay by the Union in bringing this matter to arbitration. The failure of the Union to take steps to have this matter referred to arbitration between September 22nd, 1996 and March 19th, 1997, in my opinion, is not an unreasonable delay, having regard to all of the circumstances including the subsequent delay which I have concluded was contributed to by each of the parties. The Company did not take the position in March, 1997 that this matter had not been referred to arbitration. Mr. Clark responded that he was unaware that the matter had been referred to arbitration, however Mr. Shortridge testified that Mr. Clark was not previously involved in this matter. In these circumstances, he would not have knowledge of whether the matter had been referred to arbitration or not. In March, neither Mr. Shortridge nor the Company took the position that there had been an unreasonable delay on behalf of the Union in advancing this matter to arbitration.

In light of my conclusion that in these circumstances there is no unreasonable delay on the part of the Union in bringing this matter to arbitration, it is not necessary to consider the issue of prejudice or detriment.

For these reasons I reject the Company's preliminary objections. I find that the Grievance is arbitrable and should be determined on its merits. I make no findings as to what, if any, impact the delay in processing the Grievance to a Hearing may have on the remedy, if any, which the Board may grant in the event it should allow the Grievance.

At the request of the parties, the Board shall reconvene to continue the Hearing.

DATED at the City of Saskatoon, in the Province of Saskatchewan this 27th day of November, 1998.

Kenneth A. Stevenson, Q.C.
Chairman.