CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 722

Heard at Montreal, Wednesday, October 10,1979

Concerning

QUEBEC NORTH SHORE AND LABRADOR RAlLWAY

and

UNlTED TRANSPORTATION UNlON

DISPUTE:

Voluntarily termination of Mr. G. Roberts for being absent without leave.

JOINT STATEM?NT OF ISSUE:

Mr. Roberts was on medical leave from September lst to September 3Oth, 1978. As of September 3Oth, when his medical leave had expired, Mr. Roberts did not report for work supposedly because he was medically unfit. Based on medical evidence to the contrary, Mr. Roberts was advised on November 3Oth, to make himself available for his assignment on or before December 15th. He failed to do so and was advised on March 2nd, 1979, that he had been absent without leave since September 3Oth, 1978 and that the Railway considered he had voluntarily terminated his services by December 15th, 1978, as he did not report as instructed.

The Union claimed he should be reinstated. The Railway rejected same.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD.) L. LAVOIE	(SGD.) R. BEAULIEU
GENERAL CHAIRMAN	MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

J. Bazin	- Counsel	- Montreal
S. Deslauriers	- "	- "
R. L. Beaulieu	- Superintendent, Labour Rel's., QNS&L.Rly., Sept-lles	
Jean-Paul Morel	- Asst. Labour Relations, QNS&L.Rly, Sept-Iles	
R. P. Morris	- Superintendent,	" "
J. P. Chenier	- Train Dispatcher	" "
R. B. Copp	- Chief Clerk	" "

And on behalf of the Brotherhood:

D. McLean - Local Chairman, U.T.U., Labrador City
J.M.St.Pierre - " " " Sept-lles, Que.

AWARD OF THE ARBlTRATOR

On November 30, l978, the Company wrote to the grievor instructing him to report for work on December 15, 1978. It seems clear that the grievor was expected to report for work as an engineman. The Company's medical advice indicated that that was a position which the grievor was able, physically, to perform, and it was one for which he was qualified. The union's evidence suggests that there was perhaps some doubt as to the grievor's physical ability to perform this work, since a doctor's report had reconmended that he not be involved in any lifting of objects greater than forty to fifty pounds. The only diagnosis of any disabling condition, however, is one of "chronic back pain", and there is no evidence of any medical opinion to the effect that the grievor could not carry out the duties of an engineman by reason of his physical condition.

The grievor did not make any response to the direction issued on November 30, and did not report to work on December 15, nor did he report to work thereafter. While the grievor may have felt he could not work as an engineman, it does not appear that he tried to do so, and there is, as I have said, no medical opinion to the effect that he could not do so. There was, therefore, no sufficient excuse for the grievor's not reporting to work as instructed on December 15. He had been advised that the Company considered him to be absent without leave, and yet he appears to have taken no timely step to protest that view, which appears indeed to have been properly based on the medical reports available.

Article 4.02 of Appendix "E" to the collective agreement is as follows:

> "4.02 - An employee who is absent without leave for a period of five (5) consecutive shifts on which he was scheduled to work will be considered as having voluntarily terminated his service with the Railway."

The grievor was indeed absent without leave (and, apparently, without notice) for five consecutive shifts on which he had been scheduled to work from and after December 15, 1978. The next step which appears to have been taken was a request made by the grievor in February, 1979, to receive group insurance or a disability pension. There does not appear to have been any sufficient ground for either of these benefits to be accorded.

The collective agreement contemplates that in circumstances such as these an employee's employment shall be considered terminated. The grievor had clear notice that he was considered to be absent without leave, he had a clear direction to report for work for a job which the medical evidence indicates he could do, and he was given ample time in which to raise any objection. He did nothing, and indeed never reported for work. In the circumstances, Article 4.02 clearly applies, and it must be concluded that the grievor's employment was

terminated. The grievance must therefore be dismissed.

J. F. W. WEATHERILL
ARBlTRATOR