CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 868

Heard at Montreal, Wednesday, October 14th, 1981

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

DISPUTE:

Claim on behalf of Mr. M. Dolina, Storeman, Toronto, Ontario, for two (2) hours pay at the pro rata rate while absent from work on April 7, 1981.

JOINT STATEMENT OF ISSUE:

On Tuesday, April 7, 1981, Mr. M. Dolina was off work for a period of two (2) hours to obtain x-rays recommended by his Doctor in connection with treatment being received account of a stomach problem.

The Union contended this was an absence from work due to a bona fide illness, as provided for by Article 18.1 of the Collective Agreement, and requested he be paid two (2) hours at the pro rata rate.

The Company denied the claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) W. T. SWAIN General Chairman	(SGD.) G. H. COCKBURN Manager of Materials

There appeared on behalf of the Company:

R. L. Benner, Assistant Manager of Materials, CP Rail, Montreal
D. Cardi, Labour Relations Officer, CP Rail, Montreal.

And on behalf of the Brotherhood:

D. Herbatuk, Vice General Chairman, BRAC, Montreal
G. Gilligan, Vice General Chairman, BRAC, Montreal

AWARD OF THE ARBITRATOR

Article 18.1 of the Collective Agreement is as follows:

"Weekly rated, clerical employees who are absent from duty due to bona fide illness

> will not have their pay reduced during the period of such illness up to a maximum of three calendar days, which is the waiting period for weekly indemnity under Article 16, provided that the Company is not put to additional expense on account thereof.In such cases, the Company may require the employee to furnish medical certificate attesting to the bona fides of the illness."

The grievor, it seems, is a weekly rated clerical employee. His absence was of less than three days, and the Company was not put to additional expense on account thereof. The only issue is whether or not the absence was "due to bona fide illness", within the meaning of Article 18.1.

It is not doubted that the grievor had "a stomach problem", although it would seem that this has not led to his absence from work, apart from the occasion in question. He went for X-rays at his doctor's request, and at a time when x-ray services were available. The doctor appears to have issued a certificate to the effect that the grievor was under professional care during the time involved. There is no doubt that the grievor's absence was bona fide, in the sense that it was for a proper purpose, and in connection with a genuine medical problem.

X-Rays are (usually) for the purpose of diagnosis, rather than treatment. They might show that a person suspected of being ill in fact is not ill. For the purposes of Article 18.1, however, "bona fide illness" is, I think, to be given a liberal interpretation. It is true that in Case No. 831, it was noted that "It is acknowledged that Article 18.1 would not protect the pay of employees who took time off work for a check-up or test". That was a reference to a "check-up or test" which an apparently healthy person might take in the usual course. Some "tests" however, are taken to determine the treatment or need for treatment appropriate to a condition perceived as an illness - or at least as a condition requiring medical care. In the instant case, it is my view that the grievor's condition was an"illness" in the latter sense. The x-ray, and the consultation which followed it, were appropriate to the condition from which the grievor suffered, so that the absence may properly be said to have been due to bona fide illness.

Accordingly, the grievance is allowed.

J. F. W. WEATHERILL
ARBITRATOR.