

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 929

Heard at Montreal, Tuesday, April 13, 1982

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN RAIL DIVISION)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim by Mr. Yves Carrier for loss of wages as a result of not being permitted to return to his position of Trackman.

JOINT STATEMENT OF ISSUE:

Mr. Carrier was regularly assigned to a position of Trackman. On 1 July 1978 he was involved in a motorcycle accident in which he was seriously injured. Prior to being allowed to return to work Mr. Carrier was required by the Company to have a medical examination at its Montreal Clinic on 15 September 1980. The Company Medical Department found that Mr. Carrier's condition would not permit him to meet the physical demands required of a Trackman.

The Union claims that Mr. Carrier was medically fit and should have been allowed to return to his former position of Trackman.

The Company declined the claim.

FOR THE BROTHERHOOD:

(SGD.) PAUL A. LEGROS
System Federation General
Chairman

FOR THE COMPANY:

(SGD.) D. C. FRAIEIGH
Director Labour Relations

There appeared on behalf of the Company:

K. J. Knox	- Manager Labour Relations, CNR, Montreal
T. D. Ferens	- System Labour Relations Officer, CNR, Montreal
H. Leboeuf	- Employee Relations Officer, CNR, Montreal
J. St. Michel	- Track and Roadway Officer, CNR, Montreal

And on behalf of the Brotherhood:

Paul A. Legros	- System Federation General Chairman, BMWE, Ottawa
Roland Roy	- General Chairman, BMWE, Riviere du Loup
F. L. Stoppler	- Vice-President, BMWE, Ottawa

AWARD OF THE ARBITRATOR

It will be noted that the grievor's accident occurred in July, 1978. He sought to return to work in June, 1979, presenting a doctor's certificate to the effect that he was able to do so. He was required

to undergo a Company medical examination, and as a result of that was not permitted to return to his regular work. He remained off work and, indeed, underwent surgery for a spine graft in January, 1980.

He then sought to return to work on September 4, 1980, offering a certificate from his doctor, an orthopaedic surgeon. This certificate simply indicated that the period of total disability had ended. The Company quite properly required its own medical examination and concluded, on September 15, 1980, that the grievor was fit for light to moderate work. The grievor's work as a Trackman is, by any ordinary standard, "heavy work". I do not here decide the question whether any particular tasks required of Trackmen are proper, or within the scope of labour standards legislation or regulation. There is, in any event, heavy work required, and the question is simply whether or not the grievor was physically fit to perform it without undue risk to himself or others.

That is, essentially, a matter for medical experts. The determination made by the Company's doctors was made in the light of their knowledge of the work in question. It is not at all an adverse reflection on the opinion of the grievor's doctor (a Specialist) to note that his opinion was based on the grievor's own condition, but not on a study of the work he might perform. When the nature of that work was described to the grievor's doctor, the latter qualified his opinion to some extent. In the result, and in the absence of some third opinion based on a study of the actual work to be done, it is my view that the opinion of the Company's medical officers, being that of experts having some knowledge of the work involved, must prevail. The grievor has, subsequently, been recalled to lighter work.

There is no doubt that the medical opinions in question have been objectively based, and given in good faith.

For the foregoing reasons, the grievance must be dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.