CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO.931

Heard at Montreal, Tuesday, April 13, 1982

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(ATLANTIC REGION)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim in favour of Machine Operator, Mr. J. C. Lachapelle, for the period from March 9th to April 22nd, 1981, for his regular rate of pay account CP Rail holding Mr. Lachapelle out of service pending further medical information from the grievor's doctor.

JOINT STATEMENT OF ISSUE:

Mr. Lachapelle was on paid sick leave for the period February 15th, 1981, to March 8th, 1981. Mr. Lachapelle's attending physician certified Mr. Lachapelle as being fit to resume work on March 9th, 1981. However, the Company requested a further medical report and as a result Mr. Lachapelle returned to work on April 22nd, 1981.

The Union contends, that CP Rail should have allowed Mr. Lachapelle to resume work on March 9th, 1981, and further contends that he be paid his regular rate of pay for the disputed period.

The Company declines payment on the basis that prior to returning Mr. Lachapelle to service, further medical information was require from the grievor's doctor to enable the Company to approve the grievor's return.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) H. J. THIESSEN System Federation General Chairman	(SGD.) J. B. CHABOT General Manager Operation & Maintenance

There appeared on behalf of the Company:

R. A. Colquhoun	- Labour Relations Officer, CP Rail, Montreal
B. A. Demers	- Supervisor, Labour Relations, CP Rail, Montreal
J. H. Blotsky	- Assistant Supervisor, Labour Relations, CP Rail, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen	- System Federation General Chairman, BMWE , Ottawa
L. DiMassimo	- General Chairman, BMWE, Montreal
F. L. Stoppler	- Vice-President, BMWE, Ottawa

J. C. Lachapelle - Grievor

AWARD OF THE ARBITRATOR

On February 24, 1981, the grievor, who was quite properly absent on sick leave, submitted a claim for weekly indemnity. It was a proper claim, and weekly indemnity was paid. It is true that it was a claim on the insurer, not on the Company, but the claim is submitted by the employee to his immediate supervisor, and by the supervisor to a higher officer for submission to the insurer.

On his claim form, the grievor noted his probable date of return to work as March 9. The Yardmaster made note of that in the appropriate section of the form. On the reverse of the form was the "attending physician's statement", made by the grievor's doctor, a cardiologist. On this form the doctor gave as a primary diagnosis of the grievor's condition, "diabetes" and as a secondary condition, "obesity". The doctor stated that the grievor could return to his regular work on March 9, 1981.

By letter dated February 27, the grievor's superintendent advised him that because of the nature of his illness, it would be necessary for him to have the authorization of the Company's Chief of Medical Services, before he could return to work. Having regard to the diagnosis given and to the nature of the grievor's work, the Company's concern was proper, and it was entitled to impose this requirement, which the grievor accepted.

The grievor, at substantial personal expense (and now away from work but without sickness benefits) arranged for his medical records to be sent to the Company. These records were sent on March 17, being received, it appears, on March 24. Included was a copy of a letter from the grievor's doctor, in which he stated that the grievor could return to his regular work "after three weeks' convalescence following his release from hospital on February 21, 1981". This does not square precisely with the expected date of return previously given, but I do not consider that that has any particular significance except possibly for purposes of compensation.

On March 25 - the day following receipt of the grievor's medical records - the Company wrote to his superintendent - who appears also to have been seeking the grievor's return - requesting that the medical department be advised of what complaints the grievor currently had, the severity of his diabetes and what medications were required. These concerns were, again, proper. The medical records in themselves were not responsive to the Company's earlier request. What was important was the matter of the grievor's diabetes and the method by which it was controlled. Those questions could have been answered simply enough but, despite everyone's evident good will, they had not been.

The supervisor passed the Company's request on to the grievor by letter dated March 31, 1981. In view of the conscientious effort made by the grievor (who certainly could not entirely control the matter), it may be thought that there was an undue delay in advising the grievor of the inadequacy of the information he had caused to be provided, and of the precise information it required. While I can

appreciate the reasons why the medical department would not, as a matter of policy, seek direct telephone communication with doctors involved in the treatment of employees, telephone communication with the grievor himself, whether directly or through his supervisor (confirmed in writing if that seemed wise) would not be difficult, and would be of very substantial benefit to the employee.

The above message did eventually reach the grievor, who went again to his doctor, and on April 6, 1981, the latter wrote to the Company's Chief of Medical Services, setting out clearly and precisely what needed to be known. It is in no critical sense that I would comment that it is unfortunate that the letter of April 6 was not sent a month sooner. That letter was received on April 13. The grievor returned to work on April 22.

All parties agree that the Company was entitled, in the circumstances, to seek adequate information in order to assure itself that the grievor was in fact in fit condition to carry out his duties upon his return to work. The grievor himself, as I have noted, made every effort to provide such information promptly. There were, unfortunately, delays in the compilation and transmission of the information, and as well there were delays in communication first, as to the inadequacy of the material at first provided and second, as to the adequacy of that eventually provided and of the decision that the grievor could return to work. It should be said that there appears to have been no delay attributable to the Company's medical department.

While an employer is entitled, in a proper case (as here) to assure itself as to an employee's medical condition, it must, in my view, act with dispatch, particularly where the employee, ready and willing to work, is prevented from doing so by the Company's own admittedly proper requirements. Where delay in meeting these requirements is not attributable to the Company itself, then it cannot be held responsible for the employee's loss of income. In the instant case, the very most that can be said is that the Company was slow to communicate its need for further information, and slow again to advise the grievor of the decision that he might return. The loss of earnings attributable to these delays I find to be two weeks' wages. The other delays - slow mail deliveries, and the time taken to prepare the grievor's records - cannot be attributed to the employer. Indeed, it is only in the light of the circumstances of this particular case, including the efforts - and needs - of the grievor, that I conclude that there was an unreasonable delay in determining that the grievor might return to work, and that a portion of that was attributable to a failure of communication on the part of the Company. I find that the grievor ought to have been allowed to return to work two weeks sooner than he in fact returned, and it is my award that the Company forthwith compensate the grievor in respect of two weeks' loss of earnings.

J. F. W. WEATHERILL,
ARBITRATOR.