

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1062

Heard at Montreal, Tuesday, April 12th, 1983

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)  
(Pacific Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. J. Arora, Track Maintainer, Calgary Division, was absent from work account work caused injury. On March 23 it was estimated in a Workers Compensation Board Doctor's Progress Report that the employee could return to work on April 5, 1982. The Company would not accept this report. Mr. J. Arora was required to acquire another report and was withheld from service April 5, 6 and 7.

JOINT STATEMENT OF ISSUE:

The Union contends that J. Arora, having presented his Supervisor a medical clearance form from the Workers Compensation Board to resume work April 5, 1982, should have been allowed to do so.

The Union further contends that J. Arora be paid for loss of wages for April 5, 6 and 7, 1982, at his regular rate of pay.

The Company declines the Union's contention and denies payment.

FOR THE BROTHERHOOD:

(SGD.) H. J. THIESSEN  
System Federation General Chairman

FOR THE COMPANY:

(SGD.) L. A. HILL  
General Manager,  
Operation and Maintenance

There appeared on behalf of the Company:

L. J. Masur	- Supervisor, Labour Relations, CPR, Vancouver
F. R. Shreenan	- Asst. Supervisor, Labour Relations, CPR, Vancouver
P. E. Timpson	- Labour Relations Officer, CPR, Montreal
R. A. Colquhoun	- Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen	- System Federation General Chairman, BM??, Ottawa
F. L. Stoppler	- Vice-President, BMW, Ottawa

AWARD OF THE ARBITRATOR

The issue is whether or not, in the circumstances, the Company was

entitled to require some further certification that the grievor was fit to return to work than the certificate which he presented on April 5, 1982.

That was a "doctor's progress report" issued on March 23 by a doctor at the Workers' Compensation Board. While it referred to an "estimated period of disability" of more than 21 days, that should probably be read as a reference to the whole term of disability, past and future, although that does not clearly appear from the report. The report sets out an "estimated return to work date".

Such a report is simply not a certificate to the effect that the grievor was in fact fit to return to work on April 5. The Company was entitled - and perhaps obliged - to have assurance that the grievor was not only "supposed to be fit" but was actually fit at the time of his return. The grievor obtained such a certificate from his doctor. That was accepted, and the grievor returned to work.

There was, in my view, no violation of the Collective Agreement in these circumstances, and the grievance must be dismissed.

J. F. W. WEATHERILL,  
ARBITRATOR.