

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1640

Heard at Montreal, Thursday, April 16, 1987  
Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

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

DISPUTE:

Claims on behalf of Mr. B. Parisien and Miss M. Mercier for payment of wages while absent from work account sickness in accordance with Article 18.1,

JOINT STATEMENT OF ISSUE:

Mr. Parisien was absent on April 21 and April 22, 1986 and Miss Mercier was absent on April 29 and May 2, 1986, due to bona- fide illnesses.

The Union contends that the Company did not incur any additional expenses on the dates in question as a result of these absences and that Mr. Parisien and Miss Mercier should therefore not have had their wages reduced.

The Company refused payment, claiming that additional expenses had been incurred as a direct result of these absences.

FOR THE BROTHERHOOD:

FOR THE COMPANY:

(SGD.) D.J. BUJOLD  
General Chairman  
BRAC Board of Adjustment #14

(SGD.) A.E. CUNNINGHAM  
System Manager  
Intermodal Accounting

There appeared on behalf of the Company:

D. Hamelin - Assistant Manager, Claims & Customer Accounts,  
Intermodal Dept., Montreal  
P.E. Timpson - Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

D.J. Bujold - General Chairman, Montreal  
J. Manchip - Vice General Chairman, Toronto  
R. Charbonneau- Local Chairman by Interim, Montreal

#### AWARD OF THE ARBITRATOR

Article 18.1 of the Collective Agreement provides as follows:

18.1 Absence Account Illness Weekly rated 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 grievors were absent on account of illness on the dates specified in the Joint Statement of Issue. The Company takes the position that it incurred additional expenses to cover these absences. The Union asserts that in fact the Company covered the jobs in question by using unassigned employees who, in any event, would have worked on the dates in question. On that basis, it maintains that the Company was not entitled to reduce the grievors' pay.

The material before the Arbitrator leaves the Union's contention in substantial doubt. While it is true that spare employees were used to cover the work in question, and that they had been hired at the beginning of April and were already at work when the grievors fell ill, it does appear that their assignment to replace the grievors nevertheless imposed an additional cost on the Company. It is not disputed that the spare employees were hired to help clear a backlog of work at the Customer Accounts Centre, in preparation of a transfer of functions to the Customer Credit Accounts Centre. The material discloses that up to six spare employees were utilized between April 1, 1986 and June 13, 1986 to clear the backlog and to keep ongoing work current by relieving regular employees on vacation or absent due to illness. The replacement work necessarily required postponement of the backlog assignment. Specifically, because of the relief coverage, the backlog work which was scheduled to be completed within 63 days was in fact extended to 98 days. The extension included 13 man-days to cover the replacement of employees off sick within the three day period established in Article 18.1.

There is nothing in that Article which required the Company to bring in a new spare employee to cover the work assignment of an employee who is absent due to illness. To put it differently, there is nothing to prevent the Company from diverting a spare employee who is already at work from his or her spare assignment to the assignment of a regular employee who is off sick. If that diversion occasions the delay of the spare assignment, it is obvious that the replacement on account of illness causes the Company to incur additional man-days.

As there is no challenge to the figures adduced in evidence by the Company, that is plainly what occurred in the instant case. But for the Company's need to replace the grievors on their days of illness, it would not have incurred the cost inevitable in postponing the backlog assignment of the spare employees who were diverted to cover the grievors' jobs. In these circumstances the Company was "put to additional expense" because of the grievors' absences due to illness.

For these reasons, the grievance must be dismissed.

MICHEL G. PICHER  
ARBITRATOR