

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2168

Heard at Montreal, Wednesday, 10 July 1991

concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

EX PARTE

DISPUTE:

A claim for wages and benefits from May 16, 1988, to October 21, 1988, excluding time worked as Clerk--Typist/Receptionist from September 23 -- 30, 1988, inclusive, on behalf of Ms. J. M. Hopper.

BROTHERHOOD'S STATEMENT OF ISSUE:

Following a five year leave of absence on Workers' Compensation, the grievor requested that she be medically examined in order to obtain a certificate to enable her to return to work.

On May 17, 1988, the grievor submitted a medical certificate to the Corporation declaring her unfit for her regular position of Senior Service Attendant. The grievor was physically fit for the position of Service Coordinator or Service Manager.

At the time in question, the grievor was not qualified as a Service Manager. However, the grievor was senior for the position of Assistant Service Coordinator.

The grievor returned to work on October 31, 1988, on the position of Assistant Service Coordinator. On December 16, 1988, Ms. Hopper filed a grievance alleging that she had medical clearance on May 16, 1988, but the Corporation had refused to let her return to work. The Corporation rejected the claim.

FOR THE BROTHERHOOD:

(SGD.) T. McGRATH  
NATIONAL VICE-PRESIDENT

There appeared on behalf of the Corporation:

C. Pollock -- Senior Officer, Labour Relations, Montreal  
M. St-Jules --Senior Negotiator & Advisor, Labour Relations, Montreal  
D. Fisher -- Senior Officer, Labour Relations, Montreal  
J. Kish -- Senior Advisor, Labour Relations Officer, Customer  
Services, Montreal

And on behalf of the Brotherhood:

G. T. Murray -- Regional Vice-President, Moncton  
K. Sing -- Local Chairperson, Halifax  
T. McGrath -- National Vice-President, Ottawa  
T. N. Stol -- National Vice-President, Ottawa  
A. Cerilli -- Regional Vice-President, Winnipeg  
J. M. Hopper -- Grievor

AWARD OF THE ARBITRATOR

The dispute concerns the grievor's claim that she should have been returned to work in the capacity of Assistant Service Coordinator as of May 16, 1988. Upon a review of the material filed the Arbitrator can find no evidence to rebut the assertion of the Corporation's officers that no specific request was made by the grievor to be assigned to an Assistant Service Coordinator's position prior to September of 1988. Following the request which was communicated at that time the appropriate medical clearances were obtained and the grievor eventually returned to work in that position, with some accommodation being made for her physical limitations. There having been no clear request by the grievor for the position in May of 1988, nor indeed any grievance filed with the Corporation in that regard, her claim in the instant grievance cannot succeed.

For the foregoing reasons the grievance must be dismissed.

July 13, 1991

(Sgd.) MICHEL G. PICHER  
ARBITRATOR