CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2184

Heard at Montreal, Thursday, 12 September 1991

concerning

CANADIAN PACIFIC LIMITED

and

UNITED TRANSPORTATION UNION

DISPUTE:

The dismissal of Trainman B.K. Hargreaves, Winnipeg for "undertaking a conscious and deliberate scheme to defraud the Company by reporting and presenting yourself to the Company as being physically incapacitated and disabled from working due to a job-related back injury, and then personally engaging in major renovations to the exterior of your private residence which involved extensive and repeated physical activities during a time frame in which you had claimed Workmen's (sic) Compensation benefits; deliberate, calculated and wilful attempts to mislead and defraud the Company, Winnipeg, Manitoba".

JOINT STATEMENT OF ISSUE:

On August 3, 1989, Trainman B.K. Hargreaves reported that he had injured himself while lining a switch while on duty. He sought prompt medical attention, filed the required Form 1409 with the Company, and applied for workers' compensation benefits.

Trainman Hargreaves advised that he would be off work and on compensation for his alleged back injury and declined the offer of a light duty a program in lieu of compensation.

An investigation was conducted into Trainman Hargreaves' representations and he was subsequently dismissed as noted above.

The Union contends that Trainman Hargreaves did not wilfully attempt to claim compensation in order to defraud the Company as he was merely following his Doctor's instructions.

The Union further contends that the discipline assessed is extreme and unwarranted and requests that Trainman Hargreaves be reinstated with full compensation, seniority and benefits.

The Company contends that the evidence correctly determined Trainman Hargreaves' responsibility, that the discipline assessed was neither extreme nor unwarranted and has declined to reinstate Trainman Hargreaves.

FOR THE UNION: FOR THE COMPANY:

(SGD.) L. O. SCHILLACI
GENERAL CHAIRPERSON

(SGD.) F. J. GREEN
OPERATION & MAINTENANCE WEST, HHS

There appeared on behalf of the Company:

D. A. Lypka	- Unit Manager, Labour Relations, HHS, Vancouver
R. LaRue	- Counsel, Montreal
R. M. Smith	- Counsel, Montreal
D. K. Shinkarik	- Claims Agent, Winnipeg
J. S. McLean	- Assistant Superintendent, Toronto
R. E. Wilson	- Labour Relations Officer, Vancouver
B. P. Scott	- Labour Relations Officer, Montreal
G. Chehowy	- Labour Relations Officer, Montreal

And on behalf of the Union:

D. McKee	- Counsel, Toronto
L. Schillaci	- General Chairman, Calgary
B. Hargreaves	- Grievor

AWARD OF THE ARBITRATOR

Upon a review of the material and evidence presented, the Arbitrator is satisfied that the grievor did misrepresent his medical condition, and his inability to attend at work during a period of time during which he claimed Workers' Compensation benefits while he personally undertook and accomplished major renovations to his home, including the removal of asbestos and wood siding, and the installation of foam insulation over its entire exterior surface. The evidence discloses that Mr. Hargreaves worked with tools which included a crow-bar, hammer, nails, ladder, scaffolding and a wheel barrow for periods of up to eight hours in a day while representing to the Company that he was unable, because of his back injury, to perform even light duties, and was following the regimen prescribed by his doctor.

In a letter to the grievor's counsel, dated September 3, 1991, Mr. Hargreaves' doctor, Chiropractor Brian E. Lecker, confirmed the diagnosis and course of therapy which he prescribed. In commenting upon video taped evidence of the physical activities engaged in by Mr. Hargreaves in effecting the renovations to his home in August of 1989, however, Doctor Lecker concludes with the following observation:

While I did authorize time off work, and suggested exercise, the activities undertaken as viewed on the video cassettes, goes beyond what I would have recommended and suggests that he was not impaired. The Arbitrator is compelled to agree with that conclusion. On the whole I am compelled to find, on the balance of probabilities, that although Mr. Hargreaves may have had some initial back pain on August 3 and 4, 1989, he deliberately mislead both his chiropractor and the Company as to the state of his recovery and his ability to perform the light duties which had been offered to him by the employer. His lack of candour with both the Company and Doctor

Lecker, with respect to his true condition is best evidenced by the extent of the physical activities which he undertook during the period in question. The fact that he was then claiming an inability to work and seeking to obtain Workers' Compensation benefits (which were denied on the basis of the same evidence as was presented to the Arbitrator) establish a course of deliberate fraudulent conduct which is incompatible with the relationship of trust inherent in the continuation of the grievor's employment relationship. His termination was therefore appropriate in the circumstances.

For the foregoing reasons the grievance must be dismissed.

September 13, 1991 (Sgd.) MICHEL G. PICHER
ARBITRATOR