

CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2962
Heard in Montreal, Thursday, 11 June 1998
concerning
CANADIAN PACIFIC RAILWAY COMPANY
and
CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)

DISPUTE:

Conductor W.R. Plomish being withheld from service effective April 8, 1997 pending medical approval.

JOINT STATEMENT OF ISSUE:

On October 30, 1996, while working on the West Coast Express commuter rail, Conductor W.R. Plomish suffered a soft tissue injury to his right elbow for which he received Workers' Compensation benefits. On April 4, 1997 the Workers' Compensation Board determined that Mr. Plomish's injury had resolved itself and he was able to return to his pre-injury employment. On April 8, 1997, Mr. Plomish's physician sent a letter to the Company indicating that Mr. Plomish was fit to return to work as a freight conductor with no restrictions.

On April 29, 1997, the Company declined Conductor Plomish's request to return to work immediately and requested further medical information. Despite complying with each and every one of the Company's requests for medical information, the Company refused to reinstate Conductor Plomish.

As a preliminary objection, the Company contends that the grievance was not filed in a timely fashion.

The Union grieves this action requesting that Conductor Plomish be reinstated into employment with full compensation for all lost wages and benefits and no loss of seniority.

The Company has declined the Union's request.

FOR THE COUNCIL:

(SGD.) **L. O. SCHILLACI**
GENERAL CHAIRPERSON

FOR THE COMPANY

(SGD.) **K. WEBB**

FOR: DISTRICT GENERAL MANAGER, B.C. DISTRICT

There appeared on behalf of the Company:

R. V. Hampel	- Labour Relations Officer, Calgary
M. E. Keiran	- Director, Labour Relations, Calgary
M. G. Mudie	- District General Manager, Vancouver
D. A. Lypka	- Manager, Road Operations, Vancouver
Dr. L. Scott	- Chief Medical Officer, Calgary

And on behalf of the Council:

D. J. Wray	- Counsel, Toronto
L. O. Schillaci	- General Chairperson, Calgary
J. W. Armstrong	- Vice-President, UTU, Ottawa

J. K. Jeffries - Vice-General Chairperson, Cranbrook
E. DiCredico - Vice-General Chairperson, Nanaimo
D. H. Finnson - Secretary, Saskatoon
W. R. Plomish - Grievor

The hearing was adjourned by the Arbitrator for continuation in July 1998.

On Wednesday July 15, and Thursday July 16, 1998:

There appeared on behalf of the Company:

R. V. Hampel - Labour Relations Officer, Calgary
M. E. Keiran - Director, Labour Relations, Calgary
M. G. Mudie - District General Manager, Vancouver
D. A. Lypka - Manager, Road Operations, Vancouver
Dr. L. Scott - Chief Medical Officer, Calgary

And on behalf of the Council:

D. J. Wray - Counsel, Toronto
D. H. Finnson - Secretary, Saskatoon
J. W. Armstrong - Vice-President, UTU, Ottawa
J. K. Jeffries - Vice-General Chairperson, Cranbrook
B. J. McLafferty - Vice-General Chairperson, Moose Jaw
M. G. Eldridge - Vice-General Chairperson (CNR), Edmonton
R. Sharpe - General Chairman (BC Rail), Vancouver
W. R. Plomish - Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that the grievor, Conductor W.R. Plomish, suffered an extensive history of time off duty injury in relation to his arm. It appears that the arm injury, originally suffered on January 7, 1991, led to an absence from work for 227 days. Following his return to work a recurrence on March 6, 1994 led to a further extended absence. It appears that in the aggregate he was off work in relation to his arm injury for some two years. In April of 1996 he returned to duty, restricted to passenger service by reason of his need to perform lighter duties. Mr. Plomish re-injured his arm on October 30, 1996 and resumed his compensation benefits. In the interim, on November 1, 1996, for disciplinary reasons, he was restricted from working passenger service.

It appears that on or about April 8, 1997 the Workers Compensation Board advised Mr. Plomish that he was fit to return to his pre-injury work. As he was restricted, for disciplinary reasons, from passenger service, his physician sent a letter to the Company's physician advising that the grievor was in fact fit to return to work as a freight conductor effective April 8, 1997. Faced with these rather dramatic changes of condition, in light of the extensive time off previously required for the grievor's injury, and prior medical opinions which deemed him fit only for modified duties in passenger service, the Company required further medical documentation before returning Mr. Plomish to work in freight service. That view was expressed in a letter of the Company's Chief Medical

Officer, Dr. Lise Scott, addressed to Manager Road Operations, Mr. D.A. Lypka, reading in part:

Dr. Hilliard has faxed me a three-line report from Mr. Plomish's treating doctor advising that Mr. Plomish is now fit to return to work as a freight conductor with no restrictions effective April 8, 1997. In view of the fact that Mr. Plomish has several musculo-skeletal problems that have required long-term restrictions, I do not agree that this note provides sufficient medical evidence to consider Mr. Plomish fit for full duty. As we have discussed previously, Mr. Plomish should provide detailed report from his specialist along with reports of x-rays, scans and other appropriate medical evidence to support the fact that his medical condition has changed.

Indeed, the parties within the terms of their collective agreement have considered the precautions to be taken when an employee claims to be recovered from a previously restricting medical condition. Appendix B-14 of the collective agreement provides, in part, as follows:

The Chief of Medical Services is prepared to re-assess the restriction whenever medical evidence can be produced indicating a significant change in the employee's condition. Such a review would require a report from the employee's physician to the Chief of Medical Services, describing in detail the changes in the employee's medical condition along with sound evidence that the condition which was the cause for the restriction will not recur.

Upon a review of the material filed the Arbitrator is satisfied that the Company did have reasonable cause to be concerned about the apparent recovery of Mr. Plomish given the scarcity of information provided within his own doctor's medical report, as regards his fitness to return to the heavier duties of freight service. This is not, in my opinion, a situation in which it can be shown that the Company was indifferent or dilatory in its response to the grievor's claim to be fit to return to work. Rather, it appears that the grievor himself failed to provide, in a timely manner, sufficient detail from his own physician so as to justify his immediate reinstatement into active service within the heavier demands of the job of a freight conductor. I cannot, therefore, sustain the position of the Council, on the merits, to the effect that Mr. Plomish was improperly withheld from service during the period commencing in April of 1997, as alleged. On that basis, the grievance cannot succeed.

In light of the foregoing findings I deem it unnecessary to resolve the preliminary issue of the timeliness of this grievance raised by the Company. For all of the foregoing the grievance must be dismissed.

September 4, 1998

MICHEL G. PICHER
ARBITRATOR