

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 579

Heard at Montreal, Tuesday, November 9th, 1976

Concerning

**CANADIAN PACIFIC LIMITED (CP EXPRESS)**

and

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

### **DISPUTE:**

Claim of employee D. Finley, Lachine Terminal, Montreal, Quebec, for loss of wages while being held out of service securing a medical certificate.

### **JOINT STATEMENT OF ISSUE:**

Employee D. Finley reported Friday, January 23rd, 1976, and again on Monday, January 26th, 1976, that he could not report for work as he was not feeling well.

January 27, 1976, Office Manager, C. Tremblay, called at 7:30 a.m., advising employee D. Finley not to report back to work unless he presented a doctor's certificate to support his absence from duty.

The Brotherhood contend the employee followed the Company Rules and Procedures in advising of his temporary absences from employment.

The Company contends the action taken was required.

### **FOR THE EMPLOYEE:**

**(Sgd.) L. M. PETERSON**  
**GENERAL CHAIRMAN**

### **FOR THE COMPANY:**

**(Sgd.) D. R. SMITH**  
**DIRECTOR, LABOUR RELATIONS & PERSONNEL**

There appeared on behalf of the Company:

D. R. Smith – Director Labour Relations & Personnel, Toronto  
L. Burnelle – Regional Manager, Montreal  
D. Cardi – Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

L. M. Peterson – General Chairman, Toronto  
J. J. Boyce – Vice General Chairman, Toronto

### **AWARD OF THE ARBITRATOR**

As a general rule, where an employee reports back to work after a short illness (and where he has previously reported that he would be absent) the employer would not be entitled to demand a medical certificate as a condition of return unless it had advised the employee that such was its policy, or unless the circumstances were such as to lead to an obvious concern for the health and well-being of the employee or others.

In this case there was no suggestion that assurance in the form of a medical certificate was needed to satisfy the Company that the grievor was well enough to work. Quite the contrary. The Company considered (correctly, as it turned out) that the grievor had not in fact been sick, and imposed the requirement of a doctor's certificate as a test of the *bona fides* of his absence, a test which the grievor failed, as his own acknowledgment makes clear.

While the requirement of a certificate for that purpose may be proper, it would not be proper, as I noted at the outset, to refuse an employee the right to return to his work on that ground, without notice. In this case, however, the grievor had in fact been put on notice that if his record of absenteeism – which the Company considered to fall into a rather suspicious pattern – did not improve, such a requirement would be imposed. The grievor's record did not improve, the requirement of a doctor's certificate was imposed, the grievor could not meet it, and acknowledged he had not been sick. The grievor was not disciplined, although he might well have been in the circumstances. The grievor's loss of earnings was due, not to a suspension, but rather to his failure to meet a proper condition, imposed after notice.

For the foregoing reasons, the grievance is dismissed.

**(sgd.) J.F.W. WEATHERILL**  
**ARBITRATOR**