

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 635

Heard at Montreal, Wednesday, October 12, 1977

Concerning

CANADIAN PACIFIC LIMITED

and

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

EX PARTE

DISPUTE:

Claim in favour of Mrs. P. Weale submitted under Article 18.1 of the Collective Agreement.

EMPLOYEE'S STATEMENT OF ISSUE:

On December 7th, 1976, Mrs. P. Weale was absent account bona fide illness.

The Union claim that the position occupied by Mrs. Weale was not filled and she should be reimbursed for time lost.

The Company refused payment account additional expense.

FOR THE EMPLOYEE:

(SGD.) R. WELCH

SYSTEM GENERAL CHAIRMAN

There appeared on behalf of the Company:

D. Cardi – Labour Relations Officer, Montreal
H. S. Robertson – Assistant Manager, Stores, Montreal

And on behalf of the Brotherhood:

D. C. Duquette – General Chairman, Montreal

AWARD OF THE ARBITRATOR

Mrs. Weale is a weekly rated clerical employee and was absent from duty due to *bona fide* illness on December 7, 1976. In the circumstances, it is clear that she was entitled to the benefit of Article 18.1 of the collective agreement, which provides as follows:

ARTICLE 18 – ABSENCE ACCOUNT ILLNESS

18.1 Weekly rated, clerical 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 position occupied by the grievor was not, as such, filled during her absence, but certain work which would have been assigned to her was performed by others and resulted in payment of overtime rates to other employees. There had been other occasions, it seems, in 1976 when the grievor was absent, and where no additional expense was incurred by the Company on that account. Here, however, there was additional expense, attributable to the fact of the grievor's absence at the particular time in question.

The purpose of Article 18.1 is, as is said in **Case No. 412**, "the maintenance of employees' pay in cases of illness, where no sickness benefit is available, where this can be done without increasing the Company's payroll cost". It is not an unqualified guarantee of weekly wages, but where the protection is, as here, generally available, it is subject to reduction by the amount of the Company's increased expense. That is, no overall increase in the Company's wage expenses is contemplated.

For the foregoing reasons it is my conclusion that there has been no violation of the collective agreement in the circumstances, and the grievance is accordingly dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR