

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 831

Heard at Montreal, Tuesday, May 12, 1981

Concerning

CANADIAN PACIFIC LIMITED

and

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

DISPUTE:

Claim by Miss P. Brisson for 4 hours pay at the pro rata rate absent account illness on August 6, 1980.

JOINT STATEMENT OF ISSUE:

On August 6, 1980 Miss P. Brisson was absent from work for a period of 4 hours while receiving treatment from Dr. F. Desroches.

The Union contended the provisions of Article 18.1 – Absence Account Illness applied and requested Miss Brisson be paid the 4 hours she was absent.

The Company denied the Union request.

FOR THE EMPLOYEES:

(SGD.) W. T. SWAIN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. B. CHABOT
GENERAL MANAGER, OPERATION & MAINTENANCE

There appeared on behalf of the Company:

D. Cardi – Labour Relations Officer, Montreal
J. Cuin – Supervisor Labour Relations, Montreal
J. H. Blotsky – Assistant Supervisor Labour Relations, Montreal

And on behalf of the Brotherhood:

W. T. Swain – General Chairman, Montreal
D. Herbatuk – Vice-General Chairman, Montreal
G. Gonzales – Local Chairman, Toronto
J. Manchip – Local Chairman, Montreal

AWARD OF THE ARBITRATOR

Shortly before noon on August 6, 1980, the grievor, an Assistant Maintenance of Way Clerk, asked for the afternoon off in order to keep a doctor's appointment. The appointment, which was apparently for the purpose of administering an injection for the treatment of varicose veins, had been made some time before. There would, it seems, have been some further delay in the grievor's obtaining a new appointment. Permission was granted; and the grievor was absent from work for the afternoon.

The grievor was asked if she wished to work to make up for the time lost or to have the time off deducted from her regular earnings. The grievor advised the Assistant Office Manager that her pay could be docked, and that was done. It is not suggested, however, that whatever the grievor may have said at that time now prevents the assertion of her claim to be paid in respect of the afternoon in question.

Article 18.1 of the Collective Agreement is as follows:

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 grievor is a weekly rated clerical employee; her absence was of less than three days' duration, and the Company was not put to additional expense on account thereof. A medical certificate was produced, and there is no doubt that the grievor did attend at the doctor's for *bona fide* treatment. The grievor would, therefore, be entitled to have her weekly pay maintained, and not reduced as it was, if it is the case that her absence from duty was "due to bona fide illness".

The grievor advised the Assistant Office Manager at the time that she was not "sick" – meaning, no doubt, that she would not in fact be physically incapable of performing her duties on that day. She did, nevertheless, suffer from varicose veins, and while there is no expert evidence on the point, I think it is proper to say that that is a condition calling, at least in many cases and clearly in the grievor's case, for medical treatment. It is a condition which may, in a proper case, be described as an "illness", in my view. It is acknowledged that Article 18.1 would not protect the pay of employees who took time off work for a check-up or test. Where, however, the cause of absence is the taking of treatment for a condition which may properly be described as an illness, then in my view the case is one coming within Article 18.1. It may be observed that not all "conditions requiring treatment" are properly to be described as illnesses. It is my view, however, that in the circumstances of the instant case the grievor's case does come within Article 18.1, and it is my award that she be paid accordingly.

(signed) J. F. W. WEATHERILL
ARBITRATOR