CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1403

Heard at Montreal, Wednesday, September 11, 1985

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim in favour of Track Maintenance Foreman, Mr. C. Gilbert, for the period November 16th to November 30th, 1984, for his regular rate of pay.

JOINT STATEMENT OF ISSUE:

The Union contends that: **1.** Mr. Gilbert was on Quebec Workmen's Compensation for the period March 19th, 1984, to October 26, 1984. Quebec Workmen's Compensation Doctor, André Guimont and also Dr. Lucien Grenier, the attending physician, both certified Mr. Gilbert as being fit to resume work on October 29, 1984. However, on the 13th of November, 1984, Mr. Gilbert was removed from service, because the Company requested medical information and as a result Mr. Gilbert was only allowed to work December 3rd, 1984. **2.** Quebec Central Railway should have allowed Mr. Gilbert to continue working as they had been informed by both doctors that Mr. Gilbert was fit to resume work and further contends that he be paid his regular rate of pay for the period in dispute.

The Company denied the claim and declines payment.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) H. J. THIESSEN	(SGD.) G. A. SWANSON
SYSTEM FEDERATION GENERAL CHAIRMAN	GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

J. H. Blotsky – Assistant Supervisor, Labour Relations, Toronto
R. A. Colquhoun – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen – System Federation General Chairman, Ottawa
R. Y. Gaudreau – Vice-President, Ottawa
L. M. DiMassimo – Federation General Chairman, Montreal
G. Valence – General Chairman, Sherbrooke

AWARD OF THE ARBITRATOR

The issue in this case is not whether the Company is reasonably entitled to require an employee who has endured a long term illness or injury to provide it with the necessary medical information as to his recovery upon his return to work. Nor does the issue relate to whether the Company is entitled to have its own medical officer approve an employee's return to work after a protracted absence related to a medical problem. The Trade Union has conceded this to be a reasonable requirement. Moreover, the grievor at no time has objected to cooperating with the Company in providing it with information.

The shortcoming in the Employer's policy is simply that it failed to clearly, definitively and categorically advise its employees well in advance of their return to work, of the requirements that would be made of them as a condition for their return after a protracted absence attributed to medical reasons. There is absent a policy or regulation that serves to place the employees on notice of what the Company's expectations for information might be so that their return to the work place, upon the receipt of medical clearance, might be expedited.

Instead, the Company's policy with respect to the required medical information and approval is directed towards its supervisory staff And so, when, as in the grievor's case, his supervisor inadvertently fails to apply that policy the grievor is made to suffer the consequences. Moreover, even if the grievor's supervisor applied the Company's policy with respect to the imposition of the appropriate requirement for medical information (that would have resulted in Dr. May's approval of the grievor return to work) the grievor would still most likely have been forced to endure a substantial delay until such information could be secured. Indeed, there was some evidence, although the Employer denied receiving a copy, that the Workmen's Compensation Board of Quebec in a letter addressed to the grievor dated October 4, 1984, advised the Company of the grievor's medical clearance well in advance of his scheduled return to work. Surely for the Employer's policy requirements to make any sense and so as to avoid an employee's continued and perhaps unnecessary absence from work (without pay) the requirement to secure medical information with respect to their recovery should be directed to the employees so that they know well in advance what is to be expected of them.

Quite clearly, in this case the grievor has been made to suffer for lost time at work by the inadvertence of the Company's supervisor to implement an impractical policy. Whether one chooses to characterize the grievor's loss as an unjust suspension or an unreasonably imposed lay-off I am satisfied that he merits compensation. The grievor has been prejudiced for reasons that were clearly beyond his control.

The Company is accordingly directed to pay the grievor for the time he would have worked had the grievor been extended a reasonable opportunity to satisfy the Company's policy requirements for information. I shall remain seized for purposes of implementation.

(signed) DAVID H. KATES
ARBITRATOR