CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2182

Heard at Montreal, Wednesday, 11 September 1991

Concerning

QUEBEC NORTH SHORE & LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Discharge of Joseph Vogrig.

JOINT STATEMENT OF ISSUE:

Following an investigation held January 4, 1991, Mr. Vogrig was dismissed for his record of excessive and unacceptable absenteeism. The Union considers that the discharge is unjust and requests the reinstatement of Mr. Vogrig.

The Railway has rejected the grievance.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) B. ARSENAULT	(SGD.) A. BELLIVEAU
GENERAL CHAIRPERSON	MANAGER, HUMAN RESOURCES

There appeared on behalf of the Company:

D. Manzo	– Counsel, Montreal
A. Belliveau	– Manager, Human Resources
R. Plourd	– Master Mechanic, Sept-Isles

And on behalf of the Union:

R. Cleary	– Counsel, Montreal
B. Arsenault	– General Chairperson, Sept-Isles
J. Vogrig	– Grievor

AWARD OF THE ARBITRATOR

The Arbitrator accepts that the position of the Company, to the effect that Mr. Vogrig has proven to have an unacceptable level of absenteeism, is well founded. It appears from the evidence that between June 12, 1990 and October 12, 1990, he made only three trips. That represents 84 days' absence from a total of 122 working days during that period. It is also evident that Mr. Vogrig did not make any effort to communicate to his employer the particular reasons for his absences for medical reasons. This left the Company unable to predict in a reasonable fashion if he would be in a position to provide his services at work on a regular basis in the future. Furthermore, the usual practice of Mr. Vogrig of calling the employer to confirm his availability for work, then calling back a short time later to announce that he would be absent because of illness frustrated the operations of the Company and aroused its reasonable suspicions concerning the good faith of his motives and, in the alternative, the state of his health and his capacity to fulfill his obligations at work.

However, the evidence reveals that the procedure followed by the Company was not adequate to communicate to Mr. Vogrig the need to improve his attendance at work prior to dismissing him. Moreover, the employer does not seem to have properly explained to Mr. Vogrig the need to obtain a medical opinion to confirm that he was fit for work before his return to work on December 18, 1990. If the employer demands a medical opinion to that effect, it is incumbent upon it to properly explain that to the employee or, as is often the practise of employers, to communicate directly to the doctor the purpose for the medical examination. The message communicated to Mr. Vogrig on December 18, through the intermediary of a clerk, left much to be desired, given the serious consequences to his employment which it brought into play. The fact that he returned from his own doctor with another note confirming his absence but without any medical opinion concerning his long term health is as much the fault of the employer as the employee.

In the Arbitrator's view, Mr. Vogrig's level of absenteeism and his failure to provide any explanation would justify his discharge. The Employer could reasonably believe that the pattern of his absences would not change and, in the absence of any information provided by Mr. Vogrig to establish a contrary prognosis, the Company had just cause for his discharge. However, I judge that the grievor's long years of good service and the feeble quality of the Company's communication, including the failure of a clear notice to the employee, are mitigating factors which justify the reduction of the penalty to permit the reinstatement of Mr. Vogrig. His return to work, however, must be subject to those conditions which will protect the legitimate interests of the Company.

For these reasons, the Arbitrator orders that Mr. Vogrig be reinstated into his employment, without compensation and without loss of seniority, and with the following conditions. In the two years following his return to work, Mr. Vogrig must maintain a level of attendance at work equal to the average of other employees in the bargaining unit. During these two years, if during a period of six consecutive months his absences, for whatever reason they may be, surpass the average his reinstatement might terminated at the discretion of the employer.

13 September 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR