

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2188

Heard at Montreal, Wednesday, 9 October 1991

concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

Claim for lost wages in favour of Locomotive Engineer G.D. Godin, Schreiber, Ontario, as a result of being withheld from service, for medical reasons, during the period of May 12, 1990 to June 28, 1990, inclusive.

BROTHERHOOD'S STATEMENT OF ISSUE:

On May 12, 1990, Mr. Godin was removed from service as a locomotive engineer for medical reasons, allegedly because his present medication, which was required to control his diabetes, was no longer accepted by the Chief of Medical Services, CP Rail.

The Brotherhood contends that the new policy implemented by the Company, concerning employment of diabetics and epileptics for jobs defined as safety sensitive positions, was issued over the signature of CP Rail Vice-President, Mr. R. Colosimo, on July 9, 1990, addressed to Messrs. Huckler and Wynne, respectively, advising the Brotherhood of the results of a task force report. Consequently, Mr. Godin was removed from service on May 12, and returned to service on June 28, 1990.

The Brotherhood has requested payment of lost wages for the aforementioned period of time. This request is based on the fact that the policy governing the employment of diabetics and epileptics was not issued and declared effective therein, by the Company, until July 9, 1990, some two months after Mr. Godin was removed from service.

The Company's position is that Mr. Godin was properly withheld from service on medical grounds and the request by the Union for lost wages has been denied.

FOR THE BROTHERHOOD:

(SGD.) G. N. WYNNE
GENERAL CHAIRMAN

There appeared on behalf of the Company:

R. P. Egan – Labour Relations Officer, Toronto
G. Chehowy – Labour Relations Officer, Montreal
Dr. G. Farah – Witness

And on behalf of the Brotherhood:

G. N. Wynne – General Chairman, Smiths Falls
R. S. McKenna – Local Chairman, Schreiber
G. D. Godin – Grievor

AWARD OF THE ARBITRATOR

The sole issue to be determined in this grievance is whether the grievor is entitled to compensation for the period between May 12, 1990 and June 28, 1990, inclusive. For the purposes of this arbitration the Brotherhood makes no challenge with respect to the policy of the Company as to the employment of diabetics and epileptics issued on July 9, 1990. It is also common ground that the standards established within that policy were known to the Company's medical officer, Dr. G. Farah on or about May 12th, as these were then the recommendations of a specialized medical task force established by the Company whose report is dated May 10, 1990. It is clear that Mr. Godin received individualized consideration of his circumstances as they applied to what was then the draft policy. The material before me establishes that as of May 14, 1990 Mr. Godin was taken off medication, and his diabetic condition was thereafter controlled entirely by diet. In accordance with the recommendations of the task force, and the subsequent policy adopted by the Company, that development would have entitled him to return to active service as a locomotive engineer. There is, however, no documentary evidence before the Arbitrator to establish that the removal of Mr. Godin from medication on or about May 14, 1990 was communicated to the Company's medical officer until he received a letter from the grievor's physician, Dr. R.T. Scott on or about June 27, 1990. It is clear from Mr. Godin's own representations that he was under the impression that the change in his medical status had been communicated by telephone earlier. Unfortunately, however, that is not borne out by the evidence before me. I am satisfied, on the balance of probabilities, that there was a gap in communication for which the Company cannot be held responsible. In the circumstances no violation of the grievor's rights under the collective agreement is disclosed and his claim for compensation must be denied.

October 11, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR