

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2628

Heard in Calgary, Thursday, 11 May 1995

concerning

**CANPAR**

and

**TRANSPORTATION COMMUNICATIONS UNION**

**EX PARTE**

### **DISPUTE:**

CanPar employee T. Kreeft had his doctor complete the SunLife Weekly Indemnity Benefit form stating that he would not be able to work from August 9, 1994 for an indefinite period. The form was then given to the Company who refused to submit to SunLife.

### **UNION'S STATEMENT OF ISSUE:**

The Company wrote T. Kreeft September 2, 1994 advising that his claim would not be submitted to SunLife because "it is that there has been no definite diagnosis of your condition or definite reason for your absence from work. In addition the medication you are currently on is not consistent with the treatment of your two possible medical conditions". The Union submitted a grievance September 9, 1994 requesting that the Company process the claim to SunLife, which was denied by the Company.

Doctor Lepawsky on August 12, 1994 advised CanPar Transport that T. Kreeft was unable to perform light or modified work. On August 19, 1994 Doctor Lepawsky said that T. Kreeft may attempt light duties effective August 22, 1993. Then on August 31, 1993 Doctor Lepawsky reconfirmed that T. Kreeft was still only available for light duties.

The Union believe that because the Company returned T. Kreeft to work on light duties they acknowledged that he had a medical problem. Accordingly, the Union argues that because the Company disagrees with the doctor's diagnosis and treatment, that it is not sufficient grounds for the Company or SunLife to deny the claim. Further, the Union believes that the Company's and SunLife's concerns regarding the diagnosis and treatment, should be directed to Doctor Lepawsky.

The Union requests that T. Kreeft be paid benefits in accordance with Appendix "B" page 45, 46 and 47 of the collective agreement.

The Company denied the our request.

### **FOR THE UNION:**

**(SGD.) D. E. GRAHAM**

**FOR: EXECUTIVE VICE-PRESIDENT, TRUCKING**

There appeared on behalf of the Company:

P. D. MacLeod                      –Director, Terminals, Toronto

And on behalf of the Union:

D. E. Graham                      – Division Vice-President, Regina

K. Greasley – Assistant Division Vice-President, Regina  
L. Grandinetti – Observer

**AWARD OF THE ARBITRATOR**

The evidence discloses, to the satisfaction of the Arbitrator, that the grievor did not provide to the indemnity benefits administrator, SunLife, sufficient documentation from his physician to disclose that his illness qualified for indemnity benefits for the period commencing August 9, 1994. This is not a case, in the Arbitrator's view, where the Company has somehow failed in an obligation to provide the benefits, consistent with the terms of the collective agreement. The benefits, it would appear, remained at all times available to the grievor if he had complied with the reporting and disclosure obligations required by the insurance company. The Arbitrator is also satisfied that those requirements were not unreasonable.

On the evidence, they were not met. By contrast, on an earlier occasion, when the grievor's physician informed the insurer of the precise nature of his illness, indemnity payments were forthcoming without any difficulty. What the evidence before me discloses is a failure on the part of the grievor, or his physician, to provide information which was reasonably required by the insurer. There is, therefore, no violation of the collective agreement disclosed, and the grievance must be dismissed.

May 18, 1995

**(signed) MICHEL G. PICHER**  
ARBITRATOR