

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3427

Heard in Montreal, Thursday, 13 May 2004

concerning

VIA RAIL CANADA INC.

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Payment for returning to work from sick list.

UNION'S STATEMENT OF ISSUE:

Locomotive Engineer Daniel Bouchard went on the sick list on October 24th 2002 and was in receipt of Great West Life benefits until February 8th, 2003. He further collected UIC sick benefits until May 02 2003.

On January 07th 2003, his personal physician released him from his care to return to work on January 13th. In preparation, he was scheduled for an appointment with Medysis for Jan 08 which was cancelled by the Corporation and rescheduled for Jan 17th. During an interview with Dr. Pigeon on Jan 17th he was advised he needed more rest and was subsequently denied re-entry to service until May 2nd/03.

As a result of his Doctors return to work letter, UIC has since demanded repayment of benefits from Engineer Bouchard which are still outstanding.

Remedy sought: that Engineer Daniel Bouchard be made whole from January 13th/03 until May 2nd/03, the period of time in question.

FOR THE UNION:

(SGD.) J. R. TOFFLEMIRE
GENERAL CHAIRMAN

There appeared on behalf of the Corporation:

E. J. Houlihan – Senior Manger, Labour Relations, Montreal

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| B. E. Woods | – Director, Labour Relations, Montreal |
| G. Benn | – Officer, Labour Relations, Montreal |
| G. Selesnic | – Manager, Customer Services |
| J. P. Pollender | – Manager, Customer Services |

And on behalf of the Union:

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| J. R. Tofflemire | – General Chairman, Oakville |
| S. Thérien | – Secretary, |
| M. Grieve | – Local Chairman, Div'n. 747 |

AWARD OF THE ARBITRATOR

On the material filed the Arbitrator is satisfied that the Corporation did have reasonable grounds for holding the grievor out of service for additional rest and medical assessment between January 17 and May 2, 2003. Its decision in that regard is supported by the judgement of the Corporation's Chief Medical Officer, Dr. Marcel Pigeon, an opinion which Dr. Pigeon shared thoroughly with the grievor's own treating physician who subsequently certified the grievor fit to return to work on April 25, 2003, which led to his reinstatement into active employment on May 2, 2003, although it appears that the grievor was held out of service and paid from May 2 to May 7, 2003, pending an outstanding disciplinary investigation.

On the merits of the dispute, therefore, I am satisfied that there was no violation of the rights of the grievor with respect to the decision of the Corporation to require further and better medical information prior to returning him to work. It does appear, however, that the grievor may have suffered a loss of compensation at the hands of the Employment Insurance authorities by reason of their view that he was fit to return to

work as of January 13, 2003, as initially diagnosed by his personal physician. In that regard the Arbitrator notes that the Corporation undertook at the hearing to provide to the grievor and to the Employment Insurance authorities a letter and supporting documentation to confirm that the grievor was not fit to return to work before May 2, 2003. On the understanding that that undertaking will be honoured, the Arbitrator retains jurisdiction in the event of any further issues in this matter. Subject to that reservation, the request for any further remedy must be dismissed.

May 17, 2004

(signed) MICHEL G. PICHER
ARBITRATOR