

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 3758

Heard in Montreal, Tuesday, 12 May 2009

Concerning

VIA RAIL CANADA INC.

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Appeal the suspension from active service of Locomotive Engineer Leith Rasmussen, of Kamloops, B.C., for "your failure to comply with instructions of a Corporate officer to provide medical information to VIA Rail's Chief Medical Officer, Dr. Marcel Pigeon." Further, to appeal the decision of the Corporation to decline wages claimed for 5 days while held out of service pending a doctor's certificate.

UNION'S STATEMENT OF ISSUE:

On December 20, 2008, Mr. Rasmussen advised the Corporation that he would be off on sick status from December 22, 2008 to January 9, 2008. Mr. Rasmussen's attempted return to service on January 4, 2008, was not allowed until providing a Doctor's certificate for the time period that he was sick. The Doctor's certificate was provided to the Corporation by fax on January 9, 2008 and Mr. Rasmussen was returned to active service by the Corporation. Mr. Rasmussen then submitted a claim for lost wages for the time period January 5, 2008 to January 10, 2008 that was declined.

On May 2, 2008, Mr. Rasmussen was required to attend an investigation for the reason: "failure to provide appropriate medical documentation for your absence between December 22, 2007 and January 9, 2008". After an investigation was conducted, Mr. Rasmussen was removed from service for an alleged failure to provide a Doctor's certificate for his absence from December 22, 2007 to January 4, 2008.

The Union contends that Mr. Rasmussen provided the Corporation with a Doctor's certificate, on January 9, 2008, as required in accordance with the RAC Medical Rules, the Personal Information Protection and Electronic Documents Act, as well as the Canada Labour Code. The Union further contends that the request for medical records must come from the Corporation's Chief Medical Officer to Mr. Rasmussen's Physician and not through the Local Officer. The Union also contends that Mr. Rasmussen's rights provided in accordance with Article 20 of Agreement 1.4 were violated.

It is the Union's position that Mr. Rasmussen should not have been removed from service between January 5, 2008 and January 10, 2008 and from May 2, 2008 to September 8, 2008. Mr. Rasmussen should be compensated for all loss of wages or benefits.

The Corporation's only response has been acknowledgement of the Union's grievance, which was submitted at Step III of the grievance procedure on October 22, 2008.

FOR THE UNION:

(SGD.) T. MARKEWICH

FOR: GENERAL CHAIRMAN

There appeared on behalf of the Corporation:

- A. Richard – Sr. Advisor, Labour Relations, Montreal
- J. Gosse – Manager, Train Operations, Kamloops
- D. Stroka – Sr. Advisor, Labour Relations, Montreal
- G. Larochelle – Manager, Train Operations, Edmonton
- M. Hopkins – Officer, Crew Control
- B. Wilson – Officer, Crew Control

And on behalf of the Union:

- D. Ellickson – Counsel, Toronto
- B. Willows – General Chairman, Edmonton
- T. Markewich – Vice-General Chairman, Edmonton
- P. Vickers – General Chairman, Sarnia
- L. Rasmussen – Grievor

AWARD OF THE ARBITRATOR

For the reasons related in **CROA&DR 3759** the grievance is allowed.

May 19, 2009

(signed) MICHEL G. PICHER
ARBITRATOR