CANADIAN RAILWAY OFFICE OF ARBITRATION

& DISPUTE RESOLUTION

CASE NO. 4270

Heard in Montreal, December 11, 2013

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

UNITED STEELWORKERS – LOCAL 1976

DISPUTE:

The connection with Manulife refusing to pay Mr. X. for his disability.

UNION'S EXPARTE STATEMENT OF ISSUE:

Mr. X. put a claim into Manulife for a disability that has prevented him from returning to his position as General Clerk Inspector since December 13, 2012. Manulife refused to provide benefits first denying his claim on January 28th, 2013 and then again denying his appeal on March 14th. The Company is self-insured and at the end of the day, they can decide who is eligible to receive benefits.

The Company on one hand, sent him home because they found him unfit to work while on the other hand, he was denied benefits.

Mr. X. has a medical condition that is well known to CP Rail and has been accommodated since he entered the service on May 4th 2004. The recent changes adopted by CP Rail that include terminal closures and job abolishment have obviously had an effect on all employees including Mr. X. Mr. X. is following his physician's recommendations and has complied with the requested information from the Company.

The Union put a grievance and claimed that the Company instruct Manulife to overturn their decision in denying the claim and pay Mr. X. for the time he has been off and put him back on the benefit plan.

The Company denied the grievance.

FOR THE UNION: FOR THE COMPANY:
(SGD.) R. Marleau   **(SGD.)**
Vice-President

There appeared on behalf of the Company:

B. Sly	– Director Labour Relations, Calgary
D. Burke	– Manager Labour Relations, Calgary
J. Evans	– Return to Work Specialist, Toronto

There appeared on behalf of the Union:
    R. Marleau   – Vice President District 6, North Bay
    N. Lapointe   – Staff Representative, Montreal
    X.   – Grievor, Toronto

<u>AWARD OF THE ARBITRATOR</u>

The record confirms that the grievor has been away from work since December 2012. A Functional Abilities Form submitted to the Company by the grievor's psychiatrist on January 15, 2003 stated that he was then totally unfit for any work. That was confirmed in an updated Functional Abilities Form dated April 16, 2013, and again on July 16, 2013, whereby the grievor's psychiatrist reiterated that he was totally unfit for work.

The grievor's claim to Manulife benefits, apparently filed with the Company on January 17, 2013 was denied by Manulife on January 28th, 2013. An appeal against that decision was made and that appeal was denied, also by Manulife, on March 13, 2013. It appears that Manulife concluded that the grievor was in fact not totally disabled within the meaning of the insurance contract which defines total disability as follows:

> "Disability" or "Disabled" means that an Eligible Employee has become wholly and continuously disabled from bodily injury or from sickness or disease so as to be prevented from performing the essential duties of his regular occupation or regular employment".

It is well established that in a case such as this to overturn the considered conclusion of a Company such as Manulife, evidence must be adduced to establish that the decision of the insurer proceeded on a basis found to be arbitrary, discriminatory, or

in bad faith. That has been repeatedly confirmed by this Office, since the award in CROA 2849.

At best, what the instant case reveals is a difference of opinion between the grievor's own physician and the physicians and consultants of Manulife. On the whole, therefore, the material before me does not allow me to conclude, on any responsible basis, that in the instant case the insurer Manulife, or the employer, have acted in a manner that is arbitrary, discriminatory or in bad faith in relation to the assessment of the grievor's entitlement to disability benefits.

For these reasons the grievance must be dismissed.

December 16, 2013   _____

                                                                           MICHEL G. PICHER
                                                                           ARBITRATOR