CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1649

Heard at Montreal, Wednesday, May 13, 1987

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF RAILWAY, AIRLINE & STEAMSHIP CLERKS

DISPUTE:

The Company refused to permit Ms. A.M. Couse to return to work without a medical clearance from a Specialist.

JOINT STATEMENT OF ISSUE:

Ms. Couse was absent from work due to a back injury and returned to work December 2, 1985.

Ms. Couse's position was abolished February 28, 1986 which resulted in her being laid-off.

The Company would not recall or permit Ms. Couse to return for work without a medical clearance from a Specialist.

The Union contends the Company violated article 25.2 and 25.8 of the collective agreement.

The Company denied any violation.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) J. MANCHIP	(SGD.) K. PORTER
FOR: GENERAL CHAIRMAN	ASSISTANT COMPTROLLER, REVENUES AND CLAIMS

There appeared on behalf of the Company:

G. L. Dockrill	– Assistant Manager, C.C.A.C., Toronto
W. J. Little	– Manager, C.C.A.C., Toronto
P. E. Timpson	– Labour Relations Officer, Montreal
K. E. Price	– Observer, Personnel Assistant

And on behalf of the Brotherhood:

J. Manchip	– Vice-General Chairman, G.S.T., Toronto
J. Germain	– Vice-General Chairman, Montreal
G.B. Gonzales	– Local Chairman, Toronto

AWARD OF THE ARBITRATOR

In this grievance the onus is upon the Union to establish that Ms. Couse was medically fit for work during the period for which it alleges the Company declined to recall her based upon her seniority. It is common ground that the grievor suffered from a back condition, apparently caused by injury sustained while at work. This caused her to be absent, on Workers' Compensation benefits, between October and December of 1985. She resumed work on December 4, 1985, although she continued to experience some discomfort and occasionally needed assistance in the carrying of files.

On February 28, 1986, Ms. Couse's position was abolished and she was laid off. Subsequently, on March 17, 1986, the manager of the C.C.A.C., Mr. W.J. Little telephoned the grievor to offer her an available vacancy in a junior clerk position. Being advised that the job consisted of file duties and a certain amount of carrying of cartons the grievor declined the position offered, indicating that her back condition was the reason, and advising that she would prefer to wait for a job more secretarial in nature. Thereafter, the Company took the position that the grievor must show satisfactory evidence of medical fitness before being allowed to resume work. When such evidence was produced, in the form of a letter from a medical specialist, in October of 1986, Ms. Couse was returned to work.

The Union questions the Company's interpretation of the conversation between the grievor and Mr. Little on March 17, 1986. In the circumstances, the Arbitrator must prefer the Company's version of what transpired. Mr. Little was in attendance at the hearing, and was available to give evidence to support the Company's representations. Ms. Couse was not present. There is no suggestion that the Union is surprised by the position of the Company respecting the conversation in question. There is, moreover, documentary evidence confirming that after her initial refusal to accept the recall, the grievor applied for further Workman's Compensation benefits, albeit unsuccessfully, to be payable from March 24, 1986. In the circumstances I am prepared to infer that the account of' the conversation of March 17th put forward by the Company is correct.

The Company has a right to ensure that employees are physically fit to perform the work assigned to them. The Arbitrator was directed to no provision of the collective agreement that would require the employer to substantially alter the content of an established position or to assign help to an employee in the position of the grievor if he or she should be suffering from a compensable injury. In all of the circumstances the Company's insistence on satisfactory medical evidence as to the grievor's recovery from her back problem prior to her recall was not unreasonable, and no violation of the collective agreement is disclosed. For these reasons the grievance must be dismissed.

(signed) MICHEL G. PICHER
ARBITRATOR