CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2849

Heard in Calgary, Tuesday, 13 May 1997

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

CanPar Transport employee R. Thorner denied Weekly Indemnity Benefits.

EX PARTE STATEMENT OF ISSUE:

On May 22, 1996, Mr. Kenneth Fung, M.D., placed Mr. Thorner on medical leave for approximately six (6) weeks because of stress related illness.

Mr. Thorner applied for Weekly Indemnity Benefits on May 31, 1996 and on June 14, 1996 Metropolitan Life acting on behalf of CanPar Transport declined his claim.

Mr. Thorner applied for Workers' Compensation on June 25, 1996 which was denied by the Workers' Compensation Board as they deemed his condition was not work related.

The Union discussed the claim with Mr. M. Hammond, Ms. L. Pothier and Ms. D. Case asking that Mr. Thorner be paid Weekly Indemnity Benefits but was unable to get it resolved. The Union on November 19th, 1996 filed a grievance at Step 2 requesting that the claim for Weekly Indemnity Benefits be paid.

The Company declined the Union's request.

FOR THE UNION:

(SGD.) D. E. GRAHAM
DIVISION VICE-PRESIDENT

There appeared on behalf of the Company:
P. D. MacLeod – Vice-President, Operations, Mississauga
D. Beatty – Supervisor, Calgary (Observor)

And on behalf of the Union:
D. E. Graham – Division Vice-President, Regina

AWARD OF THE ARBITRATOR

The Company takes an initial objection to the arbitrability of this grievance. Its representative submits that the record discloses that it was initiated in an untimely manner, at step 2. The record discloses that the grievor's claim for weekly indemnity benefits was made on May 31, 1996 and declined by Metropolitan Life on June 14, 1996. It is not disputed that no grievance was filed until November 19, 1996, it then being commenced at step 2.

The Company's representative notes that on October 3, 1996, the Union's representative was advised that Metropolitan Life refused to reconsider its position, in light of a report from the grievor's physician, and that the file was closed. It appears that this was further confirmed to Mr. Graham by Company representatives on October 21st, when he was told that the file would not be re-opened. Nevertheless, no grievance was filed until November 19th.

The Union's representative submits that, from his standpoint, the matter had not matured to the point of a timely grievance, as it was still being discussed between the parties. The Arbitrator has some difficulty with that assertion. The general purpose of a grievance procedure within a collective agreement is to give some clarity and finality to the procedure by which disputes are to be progressed. Article 9 of the collective agreement provides for policy grievances to be commenced at step 2. Individual grievances, which should apply to the claim in this case, are to commence at step 1. The relevant language of the collective agreement is as follows:

> **9.1** **…**
> **Step 1** The aggrieved employee or the Local Chairman shall present the grievance in writing to the employee's Regional Manager within 14 calendar days following the cause of the grievance. Such Regional Manager will render a decision in writing, giving his reasons for the decision, within 14 calendar days following receipt of the written grievance.
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> **Step 2** If the grievance is not settled at Step 1, the Division Vice-President may appeal the decision in writing, giving his reasons for the appeal, to the officer designated by the Company, within 28 calendar days following receipt of the decision rendered in Step 1. Such Company officer will render a decision in writing, giving his reasons for the decision within 28 calendar days following receipt of the appeal.
>
> **…**
>
> **9.3** When a grievance is not progressed by the Union within the prescribed time limits, it shall be considered as dropped. When the appropriate officer of the Company fails to render a decision within the prescribed time limits, the grievance may be progressed to the next step within the prescribed time limits based on the last date such a decision was due, except as otherwise provided in Clause 9.4.
>
> In the event the Company fails to respond to a grievance within the prescribed time limits, the Union may process the grievance from that point onward in accordance with the procedures herein except that the time limits in respect of that grievance from that point onward shall be directory.

In the Arbitrator's view the timeliness objection of the Company must succeed on two grounds. Firstly, the Union knew, or reasonably should have known, that the Company was declining the grievor's claims for weekly indemnity payments as of October 3, 1996 and, at the very least, as of October 21, 1996. On that basis, whether the fourteen day time limit in respect of step 1, or the twenty-eight day time limit relating to step 2 is applied, the Union's action was untimely. If it were necessary to decide the matter, I would rule that the Union was obliged to initiate the claim at step 1, and to do so within fourteen days of October 21, 1996.

For the foregoing reasons the Arbitrator concludes that the grievance is inarbitrable. Alternatively, if it were necessary to so rule, I would not have found that the grievance could succeed on its merits. It is common ground that the collective agreement incorporates the provisions of the insurance plan which is administered by Metropolitan Life, although the Company acts as a self-insurer and pays the costs of claims. One of the conditions of the weekly indemnity coverage in the plan, which I take to be accepted by both parties in respect of proof of claim is as follows:

> PROOF OF CLAIM
> Written proof of Full Disability **satisfactory to Metropolitan** must be made to and received by Metropolitan's Claim Office within 31 days of the commencement of any period of disability for

> which benefits are payable. If proof is received later than 31 days from the commencement of disability, benefits will commence, subject to all other Plan provisions, on the date of receipt of proof at Metropolitan's Claim Office.
>
> Notwithstanding approval by Metropolitan of proof of your Full Disability, Metropolitan may at any time or times thereafter request proof satisfactory to Metropolitan of the continuance of Full Disability, and Metropolitan will have the right to have a Doctor of its choice medically examine you.
>
> If such proof is not furnished at Metropolitan's request, your Full Disability will be considered to have ceased and your Weekly Benefits will be discontinued.
>
> [emphasis added]

As is apparent from the foregoing, the parties have contractually agreed to establish Metropolitan Life as the primary judge of the merit of an individual employee's claim to weekly indemnity benefits. The Arbitrator is satisfied that the insurance company's opinion is to govern, subject only to it being given for reasonable and valid business purposes, and not for motives that are arbitrary, discriminatory or in bad faith. There is no such suggestion in the case before me. Plainly, the very sketchy report as to the grievor's condition provided by his family physician was, understandably, not deemed by the insurance company to be a satisfactory account of his condition, or to constitute sufficient proof of his inability to perform his job. On that basis the Arbitrator can see no violation of the collective agreement.

For all of the foregoing reasons the grievance must be dismissed.

Dated at Montreal, May 30, 1997

(signed) MICHEL G. PICHER
ARBITRATOR