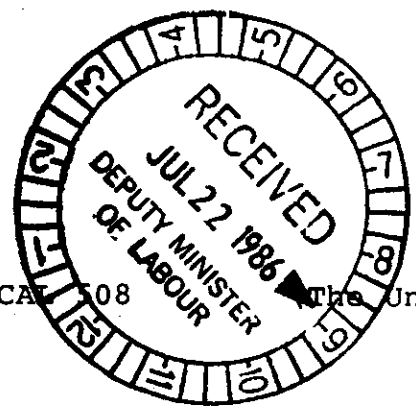


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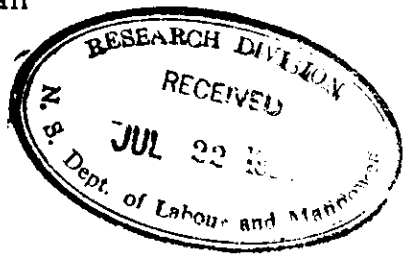
IN THE MATTER OF AN APPLICATION FOR A  
BETWEEN: AMALGAMATED TRANSIT UNION, LOCAL 108 (The Union)  
AND:

METROPOLITAN TRANSIT COMMISSION (The Employer)

RE: Policy Grievance on Sick Pay Entitlement

BEFORE: Donald H. McDougall, Employer Nominee  
David Reynolds, Union Nominee  
Innis Christie, Chairman

AT: Halifax, Nova Scotia



Hearing Date: June 10, 1986

For the Union:  
Arthur S. Beaver, Recording Secretary  
Charles D. Clancy, President - Business Agent

For the Employer:  
Terry Roane, Counsel  
John Gale, Articled Clerk  
Arthur Russell, Director of Personnel

DATE OF DECISION: July 11, 1986

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Union policy grievance alleging that a notice to all employees posted by the Employer on December 11, 1985 violated Articles 16.01 and 16.07 of the Collective Agreement between the parties effective March 1, 1985 to February 28, 1986. The Union requested that the Employer correct the problem immediately.

At the outset of the hearing both parties agreed that this Board of Arbitration was properly constituted and seized of this matter and agreed that all time limits under the Collective Agreement, either pre- or post-hearing, are waived.

#### A W A R D

Under date of December 11, 1985 the Employer posted the following notice, over the signature of A. J. Russell, Director of Personnel:

Clause 16.02 of the current Collective Agreement reads 'The Commission may request a certificate from a qualified medical practitioner during the period of absence, and send a doctor/foreman - supervisor representing the Commission, if desired, to confirm the employee's stated reason/s for being absent from work.'

Instances are occurring wherein employees who have been requested to provide a medical certificate to cover absences from work are failing to do so.

Effective immediately, when a medical certificate has been requested, sick pay will be withheld unless this certificate is received.

The testimony of both Charles Clancy, the Union's President-Business Agent since 1980, and of Arthur Russell, the Employer's Director of Personnel, left no doubt that in the autumn of 1985 the Employer decided to adopt a new policy with respect to the

failure of employees to provide medical certificates where they had been requested to do so by the Employer, in accordance with its powers under Article 16.02 of the Collective Agreement. At the October monthly meeting of the Management-Labour Committee the Employer advised the Union of its intention to invoke a policy of withholding sick pay unless a medical certificate had been received, where one had been requested. The Union asked for time to consider the policy and to take legal advice on it. At the November meeting it was clear that the Union had not further defined its views. Subsequently, on December 11, the notice quoted above was posted. Thereafter, from January to March, any employees who failed to provide certificates as requested were warned by the Employer that the policy would be invoked against them in the future, but their sick leave claims were paid "as a matter of grace".

The grievance before us was filed on the same day that the notice was posted, that is December 11, 1985. The Employer's response was simply that it did not consider that Clause 16.01 had been violated by the notice, and the grievance was denied.

The provisions of the Collective Agreement referred to in the course of the hearing were the following:

3.02 It is further agreed that the Commission, subject to this Agreement, shall be free, therefore to exercise its best judgement in the operation of the transit system, without restricting the generality of the foregoing, with respect to increasing or decreasing operations, removing or adding to equipment, the relieving of employees from duty because of the lack of work, the employment, lay-off, or re-employment and transfer of employees, maintaining discipline and efficiency of employees, the demotion, promotion, suspension or discharge of employees for just cause.

3.03 The Commission may establish from time to time, rules and regulations governing employees covered by this Agreement. It is agreed, whenever possible, that all rules and regulations are to be discussed with the Local prior to implementation....

10.02 (e) The Arbitration Board or Arbitrator shall not be authorized to make any decision inconsistent with the provisions of the Agreement, not to alter, modify or amend any part of this Agreement; ...

ARTICLE 16 - SICK LEAVE

16.01 Sick leave with pay shall be granted under the following conditions to those full-time employees who, through illness, are unable to perform the duties of their position with the Commission.

16.02 The Commission may request a certificate from a qualified medical practitioner during the period of absence, and send a doctor/foreman-supervisor representing the Commission, if desired, to confirm the employee's stated reason/s for being absent from work. ...

16.07 All employees shall be able to use their sick leave credit for the first working day lost because of sickness. ...

16.12 Sick leave obtained fraudulently will be considered as sufficient reason for dismissal of the employee from the service of the Commission.

16.13 Sick leave shall not be granted to employees reporting illness after their scheduled time to report for work. ...

The Issue:

There was no issue between the parties before us as to the limits, if any, on the Employer's right to request a medical certificate. The only issue was whether the Employer was entitled to withhold sick pay because a medical certificate

which had been properly requested, and which the employee was obliged to provide, had not been received by the Employer.

Decision:

On behalf of the Union Mr. Beaver submitted that there are no words in the Collective Agreement which entitle the Employer to refuse sick pay because a certificate requested under Article 16.02 has not been provided. In his submission Article 16.01 gives an absolute right to "sick leave with pay" to all "full time employees who, through illness, [were] unable to perform the duties of their position...". That entitlement, he submitted, is buttressed by Article 16.07 which gives an unconditional right to all employees "to use their sick leave credit for the first working day lost because of sickness". Moreover, he submitted that Article 16.13 is an example of a situation in which employees are not entitled to sick pay even though they have reported illness; that is where they have not reported until after their scheduled time to commence work. He argued that if failure to provide a requested certificate was to have a similar effect it would have been dealt with explicitly, as late reporting is in Article 16.13.

Finally, Mr. Beaver pointed to Article 16.12 as the remedy available to the Employer where employees abuse sick leave. He submitted that by making no explicit provision for the withholding of sick leave pay where a requested certificate was not provided the parties had indicated their intention that the only remedy should be that found in Article 16.13.

For the Employer, Ms. Roane submitted that the entitlement to sick leave under Article 16.01 is not absolute, but explicitly arises only "under the following conditions...". In her submission those conditions include the Employer's power to request a certificate under Article 16.02 and the employee's compliance with that request.

In direct examination Mr. Russell, the Employer's Director of Personnel, testified that prior to 1981, when the Dartmouth Transit Commission and the Halifax Transit Commission amalgamated to form the Employer, the rule for Dartmouth's employees had been that sick leave entitlements arose on the first day of sick leave, whereas for Halifax employees the rule had been that entitlement did not arise until the second day. Mr. Beaver objected to the admissibility of such evidence, but the Board admitted it, subject to his objection, to be taken into account only if the Board found that there was an ambiguity in the words of the Collective Agreement. In effect, Ms. Roane's submission on this point was that if the Board thought that the unconditioned words of Article 16.07 appeared to give employees claiming sick leave a more absolute right than might accrue under Articles 16.01 and 16.02 then the Board should refer to this negotiation history to understand the purpose and intent of Article 16.07.

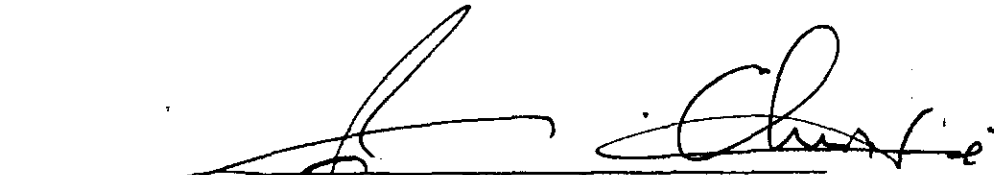
The conclusion of the Board in the very limited issue before us is that under this Collective Agreement the words in Article 16.01 stating that sick leave with pay "shall be granted under the following conditions" [underlining added] are determinative. Quite clearly the Employer's entitlement to request a medical certificate

in accordance with Article 16.02 is one of those "following conditions", and where that condition is not satisfied entitlement to sick leave pay simply does not arise. As we said at the outset, we are not concerned in this award with the limitations, if any, on the Employer's entitlement to request a certificate. This policy grievance addresses medical certificates properly requested and improperly withheld.

Article 16.07 does not assist the Union. Its evident purpose is to specify, for all employees in the bargaining unit, on which day sick leave entitlement commences. No reference to extrinsic evidence is necessary. Article 16.07 cannot sensibly be read to eliminate a condition established by the clear wording of Articles 16.01 and 16.02.

By the same token, both Articles 16.12 and 16.13 serve separate purposes under the Collective Agreement and do not suggest other than a plain reading of Articles 16.01 and 16.02.

For these reasons we are unable to accept the submissions on behalf of the Union. The grievance is therefore denied.



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Innis Christie, Chairman



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Donald H. McDougall



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David Reynolds