

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2067

Heard at Montreal, Tuesday, 13 November 1990

Concerning

VIA RAIL CANADA INC.

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

The Brotherhood's appeal of the instructions issued by the Corporation that one locomotive engineer accompany the equipment while either being turned on the wye in Montreal, or moved between Central Station and the Montreal Maintenance Centre (MMC).

JOINT STATEMENT OF ISSUE:

On March 18, 1988, the Corporation issued instructions to its train and engine service personnel that effective March 21, 1988, on certain inbound trains to Central Station, only one locomotive engineer, the engineer in charge, would be required to remain on duty to turn the equipment and re-spot it back in the station.

The Corporation issued further instructions that, effective October 30, 1988, one locomotive engineer and one train crew member would accompany their equipment either to or from the MMC.

The Brotherhood contends that the Corporation's instructions contravene Article 1.5 and Addenda 31A, 31B and 31D of Collective Agreement 1.1 pertaining to a "second employee in the cab of a diesel locomotive on a conventional passenger train". In particular, the Brotherhood alleges that the Corporation has attempted to alter an accepted practice by requiring only one member of the engine crew to perform the work of turning equipment and moving equipment between the MMC and Central Station in Montreal, while at other locations, both locomotive engineers perform this work.

Alternatively, the Brotherhood contends that the provisions of Article 11.3 of Collective Agreement 1.1 are applicable and, therefore, that locomotive engineers performing these movements are entitled to payment for a separate day for such work at yard rates.

It is the Corporation's position that there is nothing in the Collective Agreement which would require that two locomotive engineers be used to perform such movements. Further, it is the Corporation's position that the work performed by the locomotive engineers when turning the equipment and operating between MMC and Central Station is work in connection with their train and, therefore, is consistent with Article 11.3. Consequently, the Corporation has declined both the Brotherhood's appeal and its

claims for payment of an extra day.

FOR THE BROTHERHOOD:

(SGD) J. D. PICKLE
GENERAL CHAIRMAN

FOR THE CORPORATION:

(SGD) P. D. THIVIERGE
ACTING DIRECTOR, LABOUR RELATIONS

FOR THE BROTHERHOOD:

(SGD) G. HALL
GENERAL CHAIRMAN

There appeared on behalf of the Corporation:

K. Taylor	-- Senior Labour Relations Officer, Montreal
P. J. Thivierge	-- Senior Negotiator & Advisor, Labour Relations, Montreal
M. Lacombe	-- Regional Director, Transportation, Montreal
F. H, bert	-- Observer

And on behalf of the Brotherhood:

J. D. Pickle	-- General Chairman, Sarnia
G. Hall,	-- General Chairman, Quebec
C. Hamilton	-- Vice-General Chairman, Montreal
T. G. Hucker	-- General Chairman, CP Lines West, Calgary -- Observer
G. N. Wynne	-- General Chairman, CP Lines East, Smiths Falls -- Observer

Present as an independent observer:

C. Foisy	-- Montreal
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AWARD OF THE ARBITRATOR

The facts giving rise to this grievance are the same as those which prompted the grievance resulting in an Ad Hoc arbitration award between the Corporation and the United Transportation Union, dated March 13, 1989. Because of concern with respect to the contamination of air quality in Montreal's Central Station, as a result of exhaust fumes produced by locomotives and generator units, the Corporation initiated a procedure whereby passenger trains would be turned around on the wye in Montreal, after their passengers had detrained, and returned into the station with the diesel units nearer the southern entrance of Central Station, for better ventilation. On March 18, 1988 the Corporation gave notice of its intention to implement the turnaround operation effective March 21, 1988, using one member each of the train and the engine crew to remain on duty, turn and redeliver the equipment to Central Station.

In the above noted grievance, referred to as Ad Hoc Case No. 255, the Arbitrator concluded that the Corporation was entitled to

utilize a reduced trainmen's crew in keeping with the terms of Article 7.5 of the trainmen's collective agreement. That provision specifically dealt with the right of the Corporation to utilize individual crew members to remain on duty after their crew has been released from duty to perform special service such as, for example, accompanying the equipment between station and coach yard or roundhouse. The claim of the Union that the practice of the Corporation violated crew consist requirements and yard service provisions was rejected, as was its claim that the Corporation's practice constituted a material change within the meaning of Article 79 of the Collective Agreement.

The issue in the instant grievance is most directly addressed by Article 11 of the Collective Agreement which is entitled "Service at Terminals and Switching at Turn-around Points -- Passenger Service". It provides, in part, as follows:

11.3 Locomotive engineers in passenger service used out of or at initial or final terminal to perform service other than that in connection with their train, before commencing or after completing trip, will be allowed a separate day for such work. It is understood on branch runs, or at terminals where no yard engine is on duty, road locomotive engineers may be required to do yard passenger switching, and will be considered as in continuous service.

In the Arbitrator's view what the foregoing provision plainly contemplates is that locomotive engineers in passenger service may be called upon to perform service at the initial or final terminal, either before or after a trip, which is work "in connection with their train". The intention of the article is clearly that locomotive engineers are not to be allowed the payment of a separate day for such work where it is "in connection with their train".

The circumstances at hand do not fall under the provisions of Article 1.5 which relate to the operating of trains consisting exclusively of deadhead passenger equipment. Moreover, given the specific application of Article 11.3 related above, I cannot accept the submission of the Brotherhood that what is involved is combination service under Article 1.15 or yard service that would attract a day's pay under the terms of Article 32.1 of the Collective Agreement.

The Brotherhood further relies on the provisions of Addenda 31A, 31B and 31D of the Collective Agreement to establish its claim that the turning of the passenger equipment on the wye at Montreal requires a second employee in the cab, and that locomotive engineers have first claim, to the extent that a fireman/helper is not available. That submission must likewise be rejected. Without attempting to provide an exhaustive interpretation of the addenda, which plainly represent an important set of agreements in relation to the assignment rights of locomotive engineers, it is sufficient for the purposes of this grievance to note that all three addenda are made in relation to the presence of a second employee in the cab "... on conventional passenger trains when a fireman/helper is not available." For the reasons related above, while I am satisfied that the turning of the passenger equipment on the wye at Montreal may fairly be

characterized as work in connection with a locomotive engineer's train, I cannot conclude that it constitutes the movement of a conventional passenger train within the contemplation of the addenda cited by the Brotherhood. In the result, the Brotherhood has failed to bring to my attention any provision of the Collective Agreement which would limit the right of the Corporation to assign a single locomotive engineer to effect the turnaround of the passenger equipment on the wye at Montreal in the circumstances disclosed.

For the foregoing reasons the grievance must be dismissed.

November 16, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR