

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2068

Heard at Montreal, Tuesday, 13 November 1990

Concerning

VIA RAIL CANADA INC.

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim on behalf of various Locomotive Engineers for time between their regularly scheduled on-duty time and the time they reported for duty.

JOINT STATEMENT OF ISSUE:

On various occasions, trains operated later than their scheduled times.

On those occasions, the Corporation contacted the Locomotive Engineers assigned to meet and operate the train from their terminal and set them back, that is, advised them to report at a later time.

It is the Brotherhood's position that there is no provision in the Collective Agreement permitting the employees to be "set back" and that the employees must be paid from their regularly scheduled on-duty time.

It is the Corporation's position that there has been no violation of the Collective Agreement and that the Locomotive Engineers were paid correctly.

FOR THE BROTHERHOOD:

FOR THE CORPORATION:

(SGD) D. S. KIPP
GENERAL CHAIRMAN

(SGD) C. C. MUGGERIDGE
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

K. Taylor	-- Senior Labour Relations Officer, Montreal
C. Plante	-- Observer

And on behalf of the Brotherhood:

D. S. Kipp	-- General Chairman, Kamloops
G. Hall,	-- General Chairman, Quebec
J. D. Pickle	-- General Chairman, Sarnia
G. N. Wynne	-- General Chairman, CP Lines East, Smiths Falls -- Observer
T. G. Hucker	-- General Chairman, CP Lines West,

	Calgary -- Observer
J. P. Beauregard	-- Senior Vice-Chairman, North Bay -- Observer
A. Bourgeois	-- Local Chairman, Montreal -- Observer
M. Kenney	-- Local Chairman, ONR, North Bay -- Observer
S. O'Donnell	-- Vice-Local Chairman, ONR, North Bay -- Observer

AWARD OF THE ARBITRATOR

The facts giving rise to this grievance are not in dispute. Although a number of claims are submitted, the parties have agreed that the example of Locomotive Engineer W.P. Bennett, home terminalled at Edmonton, can serve as a representative example for the purposes of this grievance.

On April 4, 1988 Mr. Bennett was due to work on VIA Trains No. 4 and No. 3 operating between Edmonton and Wainwright Alberta. The regular ordering time for VIA Train No. 4 is 1500 hours at Edmonton. It does not appear disputed that since October of 1987 Mr. Bennett has not requested a specific call for his train, but simply elected to report for the regular ordering time. At or about 1250 hours on April 4, 1988, the Corporation's Crew Management Centre called Mr. Bennett's residence and left a message that his train was operating late. He nevertheless reported for the usual on duty time of 1500 hours. In the result, VIA Train No. 4 did not arrive at Edmonton until 1800 hours.

Mr. Bennett submitted a time return claiming some 242 miles for the difference between the regular reporting time of 1500 hours and the arrival of VIA Train No. 4 at 1800 hours. The Corporation reduced Mr. Bennett's time claim to 182 miles.

The Brotherhood relies on the calling provision of the Collective Agreement which provides, in part, as follows:

65.1 Locomotive engineers will be called as far as practicable 2 hours in advance of the time for which ordered, except in cases of emergency. At a home station, final inspection time of the preceding tour of duty will not be included in determining availability for a 2-hour call. Where telephone service is available locomotive engineers will be called by telephone, except that other means may be used in cases of telephone system failure when the calling distance is not over 2 miles from the crew dispatcher's office or when locomotive engineers are accommodated in facilities provided by the Company. If other than local telephone is used, locomotive engineers will be required to accept long distance charges. Locomotive engineers assigned to regular runs or regular yard assignments will be called if request is made.

The Brotherhood's representative submits that the final sentence of the above provision is the basis for the claim which underlies this grievance. He argues that locomotive engineers who are assigned to regular runs are given the option of being called or not. He submits

that should engineers choose not to be called they are under an obligation to show up for the on duty time relating to their assignment. The Brotherhood maintains that in these circumstances the Corporation is not entitled to "set back" the locomotive engineers, and effectively force them to report at a later time. In support of its position it relies, in part, on the following provision which appears in Collective Agreement 4.3 of the United Transportation Union and the Corporation governing the calling of trainmen on the Prairie and Mountain Regions:

106.4 Trainmen on through passenger trains will be called for their assignment and advised the time required to report for duty, and shall not be set back more than once after being advised the time required to report for duty. The intent is that in the event of through passenger trains running late on their schedule, Trainmen will, where conditions permit, be advised before leaving home that they are being set back. This, of course, will only be practicable of application in instances where assigned passenger trainmen live within the calling distance, or where their residence is equipped with telephone.

(emphasis added)

The Brotherhood submits that the foregoing provision authorizes the Corporation to set back the reporting time of trainmen, but that no similar provision provides a comparable right in respect of locomotive engineers.

With those submissions the Arbitrator has some difficulty. On a general reading, it appears to me that the provision of the United Transportation Union's collective agreement reproduced above is predicated on an acknowledgment that the Corporation has a general right to advise employees that their reporting time is being delayed. What that provision does, as the Corporation submits, is to circumscribe the employer's discretion so that it may only be applied on a one-time basis. The thrust of the provision is that the Corporation cannot set back an employee's reporting time more than once.

Article 65.1 of the Collective Agreement at hand is silent on the issue of locomotive engineers being held back when their train is delayed. However, it is apparent from a broader reading of the Collective Agreement that the parties have addressed their minds to the issue of delays in reporting times. As the Corporation indicates, Article 30.1(b) of the Collective Agreement makes specific provision in respect of locomotive engineers held at an away-from-home terminal as a result of a delay in the advertised departure time of the train they are assigned to operate. It is as follows:

30.1(b) Alternatively to paragraph (a) above, employees in assigned passenger service who are held at other than their home terminal and are off duty and available for service, will be paid 1/8th of the daily rate per hour (at the rate applicable to the service last performed) for all time so held beyond a period of 5 hours after the advertised departure time of the train they are assigned to operate.

The foregoing article specifically provides that in the circumstance described the employee is not entitled to any payment in respect of the first five hours. The absence of any similar provision expressly governing the circumstances of home terminal delays is, in the Arbitrator's view, supportive of the Corporation's position that its inherent right to delay the assignment of employees is not circumscribed. Moreover, as indicated in CROA 8, the posting of bulletins in respect of the anticipated departure and arrival times of trains to which employees are assigned does not constitute a contractual guarantee. Absent language in the Collective Agreement governing home terminals similar to that found in Article 30.1(b), the Arbitrator cannot find that the Corporation is foreclosed or limited in its right to delay the reporting time of employees in the circumstances of the instant case.

For the foregoing reasons the grievance must be dismissed.

November 16, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR