

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2121

Heard at Montreal, Tuesday, 12 March 1991

concerning

VIA RAIL CANADA INC.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim on behalf of Locomotive Engineers D. Kinnear and J. Goodwein account alleged runaround on February 5, 1989.

JOINT STATEMENT OF ISSUE:

Locomotive Engineers Kinnear and Goodwein were home stationed at the terminal of Kamloops, B.C., assigned in pool service, and operated first-in first-out.

On February 4, 1989, they were ordered to operate Train No. 4 from Kamloops to Blue River, their change-off and turnaround point, then to operate Train No. 3 from Blue River to Kamloops on February 5, 1989.

Due to operating difficulties, Train No. 3 from the previous day, February 4, 1989, did not arrive at Blue River until February 5, 1989.

As there were not sufficient VIA Rail crews at Blue River to operate both Trains No. 3 on February 5, the Corporation arranged for CN to provide two locomotive engineers to operate the first Train No. 3, Blue River to Kamloops. Locomotive Engineers Kinnear and Goodwein operated the second Train No. 3 on February 5, 1989, approximately 8 hours later.

It is the Brotherhood's position that the VIA Rail work entitlement rightfully belongs to VIA Rail locomotive engineers and as the VIA passenger pool operated on a first-in, first-out basis, Locomotive Engineers Kinnear and Goodwein should properly have operated the first Train No. 3, Blue River to Kamloops, February 5, 1989.

It is the Corporation's position that Messrs. Kinnear and Goodwein did not suffer any loss of earnings and that the Brotherhood has failed to identify an article supporting their claim. Further, should any penalty be applicable, it would be limited to that contained in Article 32.2.

FOR THE BROTHERHOOD:

FOR THE CORPORATION:

(SGD.) W. A. WRIGHT

(SGD.) C. C. MUGGERIDGE

ACTING GENERAL CHAIRMAN

DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

K. Taylor	-- Senior Labour Relations Officer, Montreal
P. Gagn,	-- Observer - Crew Dispatcher, Montreal

And on behalf of the Brotherhood:

W. A. Wright	-- Acting General Chairman, Kamloops
G. Hall,	-- General Chairman, Quebec

AWARD OF THE ARBITRATOR

Before the Arbitrator the Corporation concedes that the grievors, Mr. Kinnear and Mr. Goodwein, should have operated the first Train No. 3 from Blue Water to Kamloops on February 5, 1989. It also accepts that the facts disclosed do not constitute a runaround. The only issue outstanding in this case is whether the grievors have any claim to pursue. In the Arbitrator's view they do not. The evidence discloses that although they were delayed in their departure from Blue River, they did receive the same work assignment which otherwise would have been theirs, and therefore suffered no loss of earnings. Whether other employees at Kamloops might have filed a more meritorious claim is not something which is before me.

In the circumstances, subject to the observations made above, the grievance must be dismissed.

March 15, 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR