CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2192
Heard at Montreal, Thursday, 10 October 1991
concerning
VIA RAIL CANADA INC.
and
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
DISPUTE:
The applicability of Article 89 to changes in passenger service taking effect June 4, 1991.
JOINT STATEMENT OF ISSUE:
The Corporation, by letter of March 5, 1991, informed the Brotherhood of its intention to change passenger train service between Vancouver and Jasper in addition to changes between Jasper and Prince Rupert, all to be implemented June 4, 1991.
The Brotherhood advised the Corporation that these changes should properly be made under the provisions of Collective Agreement 1.2, Article 89. The Corporation disagreed that Article 89 applied to these changes.
FOR THE BROTHERHOOD:
FOR THE CORPORATION:
(SGD.) D. S. KIPP
(SGD.) C. C. MUGGERIDGE
GENERAL CHAIRMAN
DEPARTMENT DIRECTOR, LABOUR RELATIONS
At the request of the parties, the hearing was adjourned to November 1991.
On Thursday, 14 November 1991, there appeared on behalf of the Corporation:
K. W. Taylor
Senior Officer, Labour Relations, Montreal
A. Cartier
Counsel, Montreal
W. Radcliffe
Manager, Transportation, Toronto
P. J. Thivierge
Senior Negotiator & Advisor, Montreal
And on behalf of the Brotherhood:
J. Shields
Counsel, Ottawa
D. S. Kipp
General Chairman, Kamloops
G. Hainsworth
Vice-President, Ottawa
J. D. Pickle
Canadian Director, Ottawa
C. Hamilton
General Chairman, Kingston
G. Hall,
General Chairman, Quebec

AWARD OF THE ARBITRATOR

The material filed establishes that on March 5, 1991, the Corporation advised the Brotherhood of two sets of changes being effected. The first involved the introduction of additional service, being trains 3 and 4 running three days a week between Jasper and Vancouver, for a period between June 4 and October 4, 1991. Prior to June 4 service between Vancouver and Jasper was operated by twelve locomotive engineers home terminalled at Kamloops. Four of the engineers ran between Kamloops and Vancouver, six ran between Kamloops and Jasper and two operated as spares. The changes implemented as of June 4, 1991 increased the number of engineers operating from Kamloops to Vancouver to six, the number of engineers between Kamloops and Jasper to eight and the spare engineers to three, for a total of seventeen. At the conclusion of the change, on October 4, 1991 the complement and deployment of engineers home terminalled at Kamloops returned to the status quo which existed prior to June 4, 1991.

With respect to the changes implemented on runs between Vancouver and Jasper the position of the Brotherhood is that the Corporation was required to provide a material change notice under Article 89 of the collective agreement because the running of trains 3 and 4 must, it maintains, be in conformity with the location of home terminals and away-from-home terminals as they existed prior to January 15, 1990 when an article J notice was implemented pursuant to the Special Agreement made pursuant to the Railway Passenger Service Adjustment Assistance Regulations. The Brotherhood's position is reflected in the following paragraph of a letter to the Corporation's Director of Labour Relations from the Brotherhood's General Chairman dated April 8, 1991:

This brings us to the Brotherhood's contention in the instant case. The runs that were established by Order-in-Council P.C. 1989-1974 (S.O.R./89-488) and upheld by Arbitrator Picher's award of December 18, 1989, were only permitted through the Special Agreement. There is no government initiative attached to your letter of March 5, 1991 and as a consequence, the Collective Agreement applies.

The position of the Brotherhood is further elaborated in the same letter where the General Chairman reflects its view of the manner in which the new trains must be run:

For example, as provided for under Collective Agreement 1.2 trains 3 and 4 would have to operate as follows:

#4
Vancouver to Boston Bar
Crew Change
Boston Bar to Kamloops
Crew Change
Kamloops to Blue River
Crew Change
Blue River to Jasper
Crew Change

Train #3 of course would operate on the reverse schedule. We trust this illustrates our contentions to both issues.

It is common ground that Vancouver and Jasper were closed as home terminals effective January 15, 1990 and that Boston Bar and Blue River were run through as of the same date, pursuant to the changes made through the article J notice. The thrust of the Brotherhood's position is that those changes were only effective as regards trains 1 and 2, and that any additional trains, including trains 3 and 4, must revert to the operational arrangements, home terminals and away-from-home terminals which existed prior to that time or, more precisely, that any departure from that arrangement in the operation of the additional trains must be viewed as a material change which triggers the requirement for a notice under article 89 of the collective agreement.

The Arbitrator cannot accept the submission of the Brotherhood as it relates to this aspect of the grievance. The changes in service introduced effective January 15, 1990, which were the subject of an arbitration between the same parties (award dated December 21, 1989) were changes in respect of passenger service for which an article J notice was provided, pursuant to which certain protections became available to employees adversely impacted by the changes. The changes in home terminals and the run-throughs of away-from-home terminals implemented pursuant to that notice are permanent and unqualified changes which cannot be said to be impacted or undone by subsequent events, including the establishing of additional trains over the same territory. The Brotherhood's argument would effectively reverse the changes implemented effective January 15, 1990 in a manner that is unsupported by any provision to be found within the collective agreement. At that time the Corporation was entitled, subject to the terms of the Collective Agreement and the Special Agreement, to implement the changes as it did, with the closing of home terminals and the establishing of run-throughs. To the extent that those initiatives adversely impacted employees, their protections were dealt with pursuant to their rights under the article J notice. To now submit that the introduction of additional service over the same territory, with the same home terminals and run-throughs, requires an additional article 89 notice is to seek to relitigate settled issues and to advance claims which have already been fully resolved as contemplated under the Collective Agreement and the Special Agreement. To accede to the Brotherhood's position would be to allow the revival of claims and the duplication of protections in a manner plainly not contemplated by the agreements in question. There is, moreover, no evidence of any adverse impact on the Brotherhood or its members as regards the service between Vancouver and Jasper. On the contrary, the Brotherhood has benefited from an increase, by five positions, in the work available to its members during the four month period of the temporary change.

For all of the foregoing reasons the Arbitrator can find no violation of the collective agreement in the implementation of the additional trains in service between Vancouver and Jasper.

The second aspect of the grievance relates to service between Jasper and Prince Rupert. The Corporation's advice to the Brotherhood of March 5, 1991 did not involve the addition of any new trains or the elimination of any existing runs over that territory. Rather, it related to a change in the timetable of trains 5 and 6 which operate three days a week in each direction between Jasper and Prince Rupert. That service was previously operated by four engineers home terminalled at Smithers and ten engineers home terminalled at Prince George. With the change implemented by the Corporation, effective June 4, 1991, trains 5 and 6 were made to cycle from Vancouver--Jasper trains 3 and 4, thereby causing the service to operate on different days and at a later time departing Jasper. This reduced the need for deadheading locomotive engineers over the territory in question. In this regard, the later departure time for train no. 5 from Jasper was contemplated as a permanent change.

In the result, there was a change in the amount of work available to locomotive engineers running between Jasper and Prince Rupert. Prior to June 4, 1991 fourteen locomotive engineers serviced the territory, while that number was reduced to thirteen between June 4 and October 3, 1991 and, finally, reduced further to eleven locomotive engineers as of October 4, 1991. The reduction in locomotive engineers appears to flow most significantly from the change in departure time, so that locomotive engineers arriving at Jasper on train 6 are able to work back to Prince George on train 5, thereby eliminating deadhead trips and reducing the number of locomotive engineers required to crew the trains.

The Corporation argues that the changes to service between Jasper and Prince Rupert, which admittedly adversely impact the Brotherhood and the employees it represents, are timetable changes which are part of normal railway operations, and therefore fall within the exception provided in article 89.1(i) of the collective agreement which reads as follows:

89.1(i)

The changes proposed by the Company which can be subject to negotiation and arbitration under this article 89 do not include changes brought about by the normal application of the collective agreement, changes resulting from a decline in business activity, fluctuations in traffic, reassignment of work at home stations or other normal changes inherent in the nature of the work in which locomotive engineers are engaged.

It appears to the Arbitrator that the circumstances of the change of timetable effected in the service between Jasper and Prince Rupert is generally similar to the facts considered by this Office in CROA 830. In that case timetable changes which altered the departure time of trains between Toronto and Winnipeg resulted in a reduction of crews in on-board service under the collective agreement of the Canadian Brotherhood of Railway, Transport & General Workers. In that case the arbitrator rejected the submission of the Corporation that what was involved were mere timetable changes which would qualify as normal changes inherent in the nature of the work. He commented, in part, as follows:

It is acknowledged that timetable changes at regular intervals are a normal feature of railway operations. While some employees may at times feel some of the changes which occur to be undesirable, they are not necessarily ones involving "adverse effects" within the meaning of Article 8. Substantial changes in timetables are, however, "operational" changes, and while they may not usually come within the ambit of Article 8, there may be circumstances in which they do. In my view, the instant case is an example of such.

...

On the facts of the instant case the change in operations involved not merely a change of departure and arrival times, but a change in the number of nights en route from Toronto to Winnipeg (with a resulting reduction in net hours of duty, it would seem), and, most significantly, a reduction in the number of crews. The effects on some employees, in my view, were "adverse" in the sense of Article 8 of the Job Security Agreement, and were the sort of effects which the provisions of that agreement are designed to ameliorate.

Article 8.7 of the Job Security Agreement is as follows:

The terms operational and organizational change shall not include normal reassignment of duties arising out of the nature of the work in which the employees are engaged nor to changes brought about by fluctuation of traffic or normal seasonal staff adjustments.

It was the Company's position that the rescheduling of train departure resulting from the timetable changes was a normal change inherent in the nature of the work in which on-train employees are engaged. As indicated above, it would be my view that that would generally be so, and indeed the Union was of the same opinion. The statement of that position is, however, too broad. It would permit the conclusion that the most drastic changes in operations did not involve the provisions of the Job Security Agreement, simply because those changes happened to be announced by way of a "timetable change". While, as I have suggested, most "timetable changes", involving no more than the "normal reassignment of duties" (and reference was made to the procedure of semi-annual bidding for jobs), there may nevertheless be operational changes, reflected in the timetables, which involve more than a "normal reassignment" (and are not otherwise covered by Article 8.7), and which are properly characterized as operational changes for which an "Article 8" notice is required. For the reasons set out above, having regard to the extent of the changes, their effects on employees, and the apparent purpose of the Job Security provisions, it is my conclusion that the instant case is an example of such a change and that notice pursuant to Article 8 ought to have been given in this case.

In the Arbitrator's view the foregoing passages are instructive to the resolution of this grievance as it relates to the timetable changes in service impacting the locomotive engineers in service between Jasper and Prince Rupert. While it appears to the Arbitrator that it would be doubtful to suggest that the loss of deadheading opportunities can be said to be an adverse effect within the contemplation of article 89 of the collective agreement, the same cannot be said, I think, as regards the reduction of work opportunities and the permanent reduction of locomotive engineers' positions on the territory. In this regard the Arbitrator is satisfied that the facts of the case at hand are similar to those in CROA 830, and are to be distinguished from the facts found in CROA 2070.

For the foregoing reasons the grievance is allowed, in part. The Arbitrator finds and declares that the Corporation has violated article 89.1 by failing to give notice under that provision to the Brotherhood in respect of the changes in service between Jasper and Prince Rupert which resulted in the reduction in locomotive engineers' positions on that territory. The Arbitrator retains jurisdiction with respect to the implementation of the notice and any other issues which may arise in respect of the application of article 89 in due course.

November 15, 1991

(Sgd.) MICHEL G. PICHER

ARBITRATOR