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Canadian Railway Office of Arbitration

Case No. 2580

Heard in Montreal, Tuesday, 14 February 1995

concerning

VIA Rail Canada Inc.

and

Brotherhood of Locomotive Engineers

ex parte

Dispute:

Compensation to locomotive engineers operating between Winnipeg and Sioux Lookout, while deadheading, pursuant to the provisions of collective agreement 1.2.

And, the equalization of miles to 7th Seniority District locomotive engineers as a result of the 6th Seniority District locomotive engineers operating over recognized 7th Seniority District territory between Sioux Lookout and Armstrong.

Ex Parte Statement of Issue

There are 252 rail miles, or 282 highway miles, as the case may be, between Winnipeg and Sioux Lookout. Since January 15, 1990, locomotive engineers home stationed in Winnipeg have operated, and continue to operate, the trains over this territory.

Due to the nature of the assignments which were established, these Winnipeg locomotive engineers are, when necessary, deadheaded by highway to/from Sioux Lookout. The deadhead provisions of collective agreement 1.2 between VIA Rail Inc. and the Brotherhood of Locomotive Engineers provides payment on an actual mile basis. Since January 15, 1990, the Corporation has properly compensated the locomotive engineers either 252 miles when deadheading by rail, or 282 when deadheading by highway, as the case may be.

During a meeting on October 6, 1993, concerning the implementation of a ticketless train concept, the issue of mileage for deadhead trips between Winnipeg and Sioux Lookout was discussed. The result of these discussions is that it was agreed the Brotherhood could progress a grievance on this matter beginning at Step III of the grievance procedure, and the locomotive engineers would continue to submit time returns, when deadheading, even though a ticketless train concept was implemented. The Corporation agreed to compensate locomotive engineers for deadheading as in the past, and as based on the information provided in the time returns submitted, until the grievance was resolved.

Shortly thereafter, the Corporation chose to no longer compensate the locomotive engineers 282 miles when deadheading by highway and will only compensate the locomotive engineers 252 rail miles.

Concerning the equalization of miles to the 7th Seniority District locomotive engineers, there are 139 miles between Sioux Lookout and Armstrong (Allanwater Subdivision) which is recognized as 7th Seniority District territory and over which the operation of trains belongs to 7th Seniority District home stationed locomotive engineers.

Prior to January 15, 1990, 7th Seniority District locomotive engineers home stationed at Sioux Lookout operated the trains

over this territory. As a result of operational changes effective January 15, 1990, the locomotive engineers at Sioux Lookout were afforded the benefits of the Special Agreement and Sioux Lookout was closed as a home station.

Since January 15, 1990, 6th Seniority District locomotive engineers home stationed in Hornepayne operate over three (3) subdivisions, including the Allanwater Subdivision between Sioux Lookout and Armstrong and which is 7th Seniority District territory, to Sioux Lookout.

To equalize the loss of miles to 7th Seniority District locomotive engineers over the Allanwater Subdivision, it was agreed the Corporation would compensate the locomotive engineers home stationed at Winnipeg and operating to Sioux Lookout, 139 miles each direction, on each and every trip, whether working or deadheading.

Therefore, the Winnipeg locomotive engineers have been compensated 252 miles, plus an additional 139 miles (total 391 miles) or 282 miles plus an additional 139 miles (total 421 miles) if deadheaded by highway, between Winnipeg and Sioux Lookout, since January 15, 1990.

Effective February 11, 1994, the Corporation chose to no longer equalize the 7th Seniority District locomotive engineers the 139 miles operated over their territory by the 6th Seniority District locomotive engineers.

It is the Brotherhood's position that locomotive engineers are entitled to actual miles when deadheading between Winnipeg and Sioux Lookout, either rail or highway as the case may be.

And the 7th Seniority District locomotive engineers are entitled to the equalization of miles worked by the 6th Seniority District locomotive engineers on the Allanwater Subdivision between Armstrong and Sioux Lookout.

The Corporation does not agree with the Brotherhood.

for the Brotherhood:

(sgd.) W. A. Wright

General Chairman

There appeared on behalf of the Corporation:

K. Taylor - Senior Advisor and Negotiator, Montreal

D. A. Watson- Senior Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

J. L. Shields - Counsel, Ottawa

W. A. Wright- General Chairman, Saskatoon

M. Simpson - Vice-General Chairman, Saskatoon

R. Lussier - Vice-General Chairman, Saskatoon

award of the Arbitrator

The Arbitrator is satisfied that the instant grievance is well founded. It is common ground that from January 15, 1990 The Corporation followed a practice of compensating locomotive engineers when deadheading, on the basis of highway miles or rail miles, as the case might be. In other words, when deadheaded by highway to and from Sioux Lookout, Winnipeg locomotive engineers were compensated on the basis of highway miles. The Corporation ceased its practice following a meeting in October of 1993 involving discussions of the ticketless train concept. From that time forward the Corporation proposed to pay for deadhead miles on the reduced basis of rail miles only.

It is common ground that under the provisions of the collective agreement locomotive engineers are entitled to be

compensated for deadheading on the basis of rail miles, or highway miles, depending on the method of transportation. The issue in the case at hand is whether those provisions, found in article 67, do not apply by reason of some other agreement made between the parties arising out of the article J notice given to the Brotherhood on October 11, 1989, and resulting in an equalization of miles formula applying to Winnipeg based locomotive engineers, the details of which are more amply related in an ad hoc arbitration award between these parties dated December 9, 1994.

Upon a review of the material, and the content of that award, the Arbitrator can find no evidence that there was ever any understanding or agreement between the parties that locomotive engineers deadheading between Winnipeg and Sioux Lookout would be paid other than in accordance with the terms of their collective agreement. Indeed, that was the practice for a period of several years, as noted above. While the Arbitrator appreciates that the Corporation claims to have reached a different understanding with the United Transportation Union, whose deadhead payments appear to be based on rail miles only, no evidence of any such understanding or agreement can be found as it applies to the Brotherhood of Locomotive Engineers. Indeed, as found in the ad hoc award referred to above, there was no formal agreement executed between the Corporation and the locomotive engineers in respect of the equalization of miles formula, although it was found that the Corporation did make certain undertakings to the locomotive engineers in respect of equalization of miles which resulted in a finding of estoppel. There is no evidence of any agreement between the parties to waive the provisions of article 67 of the collective agreement in respect of the payment of miles for deadheading. Moreover, even if it could be found, as the Corporation asserts, that the Corporation effectively undertook to provide to the Brotherhood the same mileage equalization, including deadheading arrangements, as it was providing to the United Transportation Union, in the absence of an agreement with the Brotherhood of Locomotive Engineers that would amount to little more than a unilateral departure from the terms of the collective agreement, without the agreement or acquiescence of the Brotherhood. In fact, no acquiescence can be found as the Brotherhood promptly objected to the Corporation's change in the method of paying deadhead miles commencing in 1993.

In the result, the Arbitrator is satisfied that the grievance must succeed. The Corporation did not obtain the agreement of the Brotherhood for the payment of deadhead miles on any basis than other than is already established in the terms of article 67 of the collective agreement. The Arbitrator directs that all locomotive engineers affected be compensated forthwith for any wages or benefits lost by reason of the method of payment adopted by the Corporation. Any remaining concerns which the Corporation may have with respect to correcting what it may perceive as an imbalance between locomotive engineers and other running trades employees can, of course, be addressed in bargaining for the renewal of the collective agreement which is currently ongoing between the parties.

17 February 1995 _____

MICHEL G. PICHER
ARBITRATOR