CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2612

Heard in Calgary, Tuesday, 9 May 1995

concerning

Via Rail Canada Inc.

and

National Automobile, Aerospace, Transportation and General Workers Union (CAW-Canada)

DISPUTE:

Mr. S. Phelan and other employees' entitlement to lodging accommodation at Jasper.

JOINT STATEMENT OF ISSUE:

The Union contends that employees are required to layover up to four hours in Jasper, therefore, they should be provided with sleeping accommodations at that location. Under the provisions of Article 6.4 of collective agreement no. 2, or paid continuous time in lieu.

The Corporation declined the grievance, in that the intent of article 6.4 is to provide sleeping or lodging accommodation during periods where employees would normally be entitled to rest, as contemplated in article 4.17.

The Corporation further maintains that the payment of continuous time in lieu, contravenes the provisions of article 4.19 of collective agreement no. 2.

FOR THE UNION: FOR THE Corporation:

(SGD.) T. N. Stol(SGD.) D. S. Fisher

for: National Coordinator for: Department Director, Labour Relations

There appeared on behalf of the Corporation:

C. Pollock – Senior Labour Relations Officer, Montreal

H. Moore – Manager, Customer Service, Vancouver

And on behalf of the Union:

R. Storness-Bliss– Regional Coordinator, Vancouver

D. Olshewski– Regional Coordinator, Winnipeg

AWARD OF THE ARBITRATOR

The facts in the instant case are not disputed. The grievor, Ms. S. Phelan, reported for duty at 10:00 PST at Prince Rupert at November 14, 1993. She worked her assignment from Prince Rupert towards Vancouver, arriving at Jasper at 08:00 PST the following morning. In accordance with normal practice, she was released from duty at 08:45, and was required to report back to work at 13:00 MST, some three hours and fifteen minutes after her release from duty, to continue the next leg of her assignment from Jasper to Vancouver. The Union alleges that the grievor was denied suitable accommodation, in accordance with article 6.4 of the collective agreement, during her off duty period while in Jasper. The Corporation submits that there was no violation of the requirements of article 6.4 in the circumstances.

Article 6.4 provides as follows:

"6.4 Employees will be provided with lodging accommodation at away-from-home terminals and sleeping accommodation during rest periods enroute."

One of the arguments advanced by the Corporation in the instant case is that Jasper is not an away-from-home terminal in the sense contemplated by the foregoing article. It submits that the grievor, being based in Vancouver, has Prince Rupert as an away-from-home terminal for the purposes of the application of

article 6.4, and that Jasper, although an intermediate point, would not qualify as an away-from-home terminal for the purposes of article 6.4. In the Arbitrator's view it is unnecessary to resolve the parties' dispute in respect of that issue, as I am satisfied that the grievance cannot succeed on the merits, even assuming, without finding however, that Jasper would be an away-from-home terminal for the purposes of article 6.4 of the collective agreement.

Firstly, it should be noted that, notwithstanding what is reflected in the Joint Statement of Issue, the Union does not claim sleeping accommodations for the grievor at Jasper. It appears to be common ground that the provision of "lodging accommodation" would, for the purposes of the instant case, be satisfied with the providing of adequate day-room facilities in which employees could rest, lodge their belongings and comfortably pass the time until such time as they are required to resume duty. It is common ground that the grievor was given sleeping accommodation aboard the train enroute between Prince Rupert and Jasper, and was afforded her full rest period in accordance with the collective agreement the night of November 14, 1993, enroute. The sole issue, therefore, is whether the grievor was deprived of lodging as contemplated under article 6.4.

The evidence establishes that the Corporation has, for some considerable period of time, allowed the employees to remain on board the train, which is placed in a siding at Jasper, at a location in the Jasper Yard described as within 100 yards of the Jasper station, until such time as it is due to depart for Vancouver, or for Prince Rupert, as the case may be. The employees are provided private roomette accommodation and, further, have access to the washroom facilities in the Jasper station, as well as to baggage checking facilities within the station, should they require them.

The Union raises a number of alleged shortcomings to support its position that the requirements of article 6.4 have not been met. Firstly, its representative notes that coach cleaners work aboard the stationary train while it is in Jasper Yard, in a way that can disturb the crew occupying roomettes while on their layover. It also submits that the crews cannot make use of the toilet facilities aboard, as it is contrary to regulations to flush the toilets while the train is within the Yard. Additionally, the Union submits that the movement of freight trains in and around the location causes a safety hazard and is a further source of disturbance.

The Arbitrator has some difficulty with the grievance, as it is presented. Firstly, within the railway industry, it is not uncommon for employees in various trades to be accommodated on boarding cars or other similar forms of accommodation, stationed on tracks at various locations, as required by circumstances particular to the industry. On that basis, the fact that the roomette cars, which, it is agreed, are heated and have suitable sink and shower facilities, can be said out of keeping with a reasonable standard of lodging accommodation, as that might be understood within the railway industry, is difficult to accept. It appears, moreover, that the practice of allowing the crews to spend their off duty hours aboard the stationary train in the Jasper yard has gone unobjected to for some years. What the whole

of the evidence discloses, in the result, is that the employees in question have the use of a private roomette, subject only to possible disturbance for a brief period when a cleaning crew is present - a circumstance which could also arise in a day-room or hotel common room situation. Further, the employees have full access to washing facilities, either in the form of a sink or shower on board, and can use toilet facilities in the nearby station at Jasper, where they can also check their belongings in a secure location, should they feel the need to do so.

For all of the foregoing reasons, and without resolving the issue of whether Jasper is an away-from-home terminal for the purposes of article 6.4, the Arbitrator is satisfied that the practice of the Corporation to allow the employees to spend their off duty hours in private roomettes aboard the train in the Jasper Yard is, in all of the circumstances, substantial compliance with the requirement to provide lodging accommodation, as contemplated under article 6.4 of the collective agreement. For these reasons the Arbitrator cannot find that there was any violation of the grievor's rights on November 14 or 15, 1993, as alleged. The grievance must therefore be dismissed.

May 18, 1995(sgd) MICHEL G. PICHER
ARBITRATOR