CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2800

Heard in Montreal, Tuesday, 10 December 1996

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS [BROTHERHOOD OF LOCOMOTIVE ENGINEERS]

DISPUTE:

Time claim submitted on behalf of G. Prouse claiming 50 miles in accordance with article 62.1 of agreement 1.1.

JOINT STATEMENT OF ISSUE:

On August 27, 1993, Mr. Prouse was called for train B393, to be on duty 11:10, ordered for 12:10. Just prior to leaving his home, Mr. Prouse was informed that train B393 was cancelled and he was now being ordered to deadhead by taxi, order for 12:10.

The Brotherhood contends that the grievor was called in accordance with article 10.1 and his call should not have been changed, except according to the article. Therefore, the Brotherhood requests that the grievor's claim for 50 miles be paid in accordance with article 62.1 of agreement 1.1.

The Company denied the grievance.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) C. HAMILTON	(SGD.) D. W. COUGHLIN
GENERAL CHAIRMAN	FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. A. Watson	– Consultant, Montreal
O. Lavoie	– Transportation Officer, Champlain District, Montreal
C. Quinlan	– Operations Coordinator, Crew Management Centre, Moncton
P. Marquis	– Labour Relations Officer, Toronto

And on behalf of the Brotherhood:

C. Hamilton	– General Chairman, Toronto
R. G. Woehl	– Local Chairman, Hornepayne
A. Doyle	– Vice-Local Chairman (VIA), Hornepayne

AWARD OF THE ARBITRATOR

The first position of the Council in this grievance is that the grievor was called and cancelled within the meaning of article 62 of the collective agreement. That article provides as follows:

> **62.1** Locomotive engineers called for service and afterwards cancelled will be paid a minimum of 4 hours, or 50 miles, at a rate per hour of 1/8th of the daily rate applicable to the locomotive and class of service called for. Locomotive engineers held in excess of 4 hours after reporting for duty, before being cancelled, will be paid for all time so held on the minute basis (each 4.8 minutes to count as 1 mile), at a rate per hour of 1/8th of the daily rate applicable to the locomotive and class of service.

> **62.2** Locomotive engineers cancelled after leaving shop track or designated track will be paid not less than 100 miles at the graduated rate applicable to the service called for and will retain their previous standing on the board.
>
> **62.3** Locomotive engineers who are allowed less than 100 miles under this article will hold their turn out.
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> **62.4** This article shall not apply to locomotive engineers who after reporting for duty are held on duty and used in service other than that for which originally called.
>
> **62.5** Locomotive engineers who report for duty and are afterwards cancelled, will be permitted to book up to 8 hours' rest at the home terminal or up to 6 hours' rest at other terminals without losing their turn.

In the case at hand, it is common ground that Locomotive Engineer Prouse was notified of the change in his assignment. In other words, he was called initially, being told that he would operate train B395, and shortly thereafter he was called and told that the train was cancelled, and that his assignment was to deadhead by taxi, at the same ordering time of 12:10. There can be little doubt, therefore, that there was a change in the assignment for which he was originally called.

The Company submits that this is not a case of the grievor having been called and cancelled within the contemplation of article 62. The Arbitrator must agree. Firstly, as appears plainly from article 62.4, the changing of an employee's service does not constitute a cancelling within the meaning of that provision, when such a change is implemented after the individual has reported for duty. If that is so, it is difficult to see why the rights of the employee should be any greater, or the obligation of the Company be any more burdensome, if the change is communicated to the employee by telephone at his home prior to the time he reports for duty. As is evident when a comparison is made between article 62.4 and article 62.5, the change of assignment is treated differently under the terms of the collective agreement than the actual cancellation of an employee who has been called. An overall review of the scheme of article 62 would suggest that the locomotive engineer who is cancelled is one who is effectively denied work. On the whole, therefore, I am satisfied that the "called and cancelled" provisions of the collective agreement have no application in the case at hand.

Alternatively the Council submits that article 10.1 has been violated. It provides as follows:

> **10.1** Locomotive engineers will be notified when called whether for straight-away or turnaround service and will be compensated accordingly. They will also be notified of the route over which the train is expected to operate if there is more than one route over which the train can operate to reach the objective terminal. Such notification will not be changed unless necessitated by circumstances which could not be foreseen at a time of call, such as accident, locomotive failure, washout, snow blockade or where the line is blocked.

The Company stresses that the article has no application where, as in the case at hand, a change in the service for which called is made by a second call to the employee before he or she leaves home, and before reporting for work. It appears to the Arbitrator that this is a matter which can be interpreted either way, on the bare language of article 10.1. The language of article 10.1 does not speak to the point in time at which a change of notification may or may not be made. The Company submits that extensive past practice supports its interpretation that in fact it remains open to the Company to communicate a change in assignment to an individual before he or she reports for duty. Specifically, it submits that for some three decades it has been common practice, without objection from the Council, for the collective agreement to be applied in such a way that the Company can change a call from working to deadheading without transgressing the requirements of article 10.1, when it does so as it did in the circumstances of Mr. Prouse on August 27, 1993.

On balance, the Arbitrator is compelled to accept the interpretation advanced by the Company. The Council has advanced no prior jurisprudence, of which I am aware, which would sustain its position that once the Company has communicated an assignment to an individual by telephone, it cannot change that assignment by a second telephone call, prior to that individual reporting for duty. On that basis, therefore, the grievance cannot succeed.

For the foregoing reasons, the Arbitrator cannot find a violation of either article 62.1 or article 10.1 of the collective agreement. The grievance must therefore be dismissed.

December 16, 1996

(signed) MICHEL G. PICHER
ARBITRATOR