CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3213
Heard in Calgary, Tuesday, 13 November 2001
concerning
CANADIAN NATIONAL RAILWAY COMPANY
and
CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(BROTHERHOOD OF LOCOMOTIVE ENGINEERS)

DISPUTE:

Declined time claim, dated August 26, 1998, submitted by Locomotive Engineer D.G. Winters of Kamloops, B.C. relative to lost work that the grievor sustained as a result of a missed call due to the Company's failure to adhere to Addendum No. 79, Item 3 of collective agreement 1.2 (formerly Appendix 9, Item 3 of the May 5, 1995 agreement).

JOINT STATEMENT OF ISSUE:

On August 26, 1998 Locomotive Engineer Winters was first out and available on the East Extended Run Pool at 08:45. At 09:55k, the grievor lest his home for a short period of time after being advised by the Crew Management Centre that he was not required for work until 14:00 on Train 7925125. After being absent for a period of thirty (30) minutes in duration, and upon his return home, Mr. Winters was advised that he had missed a call for 12:00 on Train 7925125.

The grievor submitted a claim for lost earnings that was subsequently declined by the Company.

The Brotherhood contends that the Company failed in their obligation to provide accurate line-up information, as specifically provided for in the collective agreement, that in turn directly led to the grievor missing a call, and a loss of earnings.

The Brotherhood has requested that the Company place in line for payment a sum that reflects the loss of earnings sustained by Locomotive Engineer Winters as a result of the circumstances arising from poor and inaccurate line up information.

The Company has declined the Brotherhood's appeal.

FOR THE COUNCIL:	FOR THE COMPANY:
(SGD.) D. E. BRUMMUND	(SGD.) R. RENY
FOR: GENERAL CHAIRMAN	FOR: VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

R. Reny - Human Resources Associate, Vancouver
J. Torchia - Director, Labour Relations, Edmonton
S. Zeimer - Human Resources Associate, Vancouver
S. Blackmore - Labour Relations Associate, Edmonton
R. Eisenman - Transportation Supervisor, Vancouver

And on behalf of the Council:
D. E. Brummund - Vice-General Chairman, Edmonton
D. J. Shewchuk - General Chairman, Edmonton
R. J. Ermet - Local Chairman, Jasper
R. R. Shack - Local Chairman, Edson

AWARD OF THE ARBITRATOR

The material before the Arbitrator confirms that the grievor missed a call on August 26, 1998 by reason of having left his home for a period of approximately

one-half hour. In the result he effectively missed a day's work and its corresponding earnings.

The Council asserts that in the circumstances the Company failed to honour its obligation as reflected in Addendum No. 79 which states, in part:

Employees will be provided accurate line-up information to allow sufficient rest prior to starting an extended run.

The evidence confirms that on August 26, 1998 Locomotive Engineer Winters used the "Crew Talk" system to estimate his own turn for that day. A call to Crew Talk indicated to him that this turn would be for 14:00. In fact, the train for which he was scheduled was called for 12:00. In the result, when three calls were made to his residence between 10:00 and 10:22 a.m. on that morning he was unavailable, and the work was assigned to a spare employee.

The Council asserts that in these circumstances the grievor should be compensated for the day which he missed, as the Company failed to provide accurate line-up information when the grievor made his inquiry earlier in the day on the Crew Talk system. The Arbitrator cannot agree. The evidence discloses that the crewing system is based on the establishing of windows of time during which an employee knows that he or she is liable to be called. For example, on the day in question, it does not appear disputed that the grievor's window was a six hour period. At the conclusion of that time, if not called for a train, he would be called to deadhead to the away-from-home terminal on his normal pool service. The window system is clearly conceived, as is the Crew Talk system, to give employees information that best allows them to obtain the necessary rest they need in anticipation of an extended run work assignment. In the case at hand it is not disputed that the call which went to the grievor, albeit earlier than he had expected, was within his assigned window. It is also not disputed that the grievor's train did go in the proper line-up order, as anticipated, although in fact it went some two hours earlier than initially expected.

Additionally, as stressed by the Company's representatives, the collective agreement does not provide any specified penalty for the failure of the Company to honour Addendum 79, item 3 in respect of extended runs. In that regard the provisions of the collective agreement are to be contrasted with those which do establish specific penalties, for example in the event of a run-around of an employee. I find in unnecessary to rule on this issue. It may well be that if it could be demonstrated that a negligent or reckless violation of the obligation to provide accurate line-up information resulted in an employee losing a day's work the case for compensation might be established. This is not such a case, however, as the information provided to the grievor was, in the Arbitrator's view, consistent with the terms of Addendum No. 79. I cannot accept the submission of the Council, which is tantamount to asserting that the Company cannot advance the scheduled time of a train to differ from that which is related on Crew Talk. The very purpose of the system is to give a general estimate, and not a guaranteed time of departure.

For all of the foregoing reasons the grievance must be dismissed.

November 16, 2001

MICHEL G. PICHER
ARBITRATOR