

**CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3367**

Heard in Montreal, Thursday, 11 September 2003

concerning

VIA RAIL CANADA INC.

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
EX PARTE**

DISPUTE:

Routing of train 14 - Moncton, N.B. to Halifax, N.S.

BROTHERHOOD'S STATEMENT OF ISSUE:

On June 30, 2000, the Corporation advised the Brotherhood via email that, effective with the 2000 Fall Change of Time, Train 14 would be advertised to operate from Moncton to Halifax, via Windsor Junction as opposed to the present operation of Moncton to Halifax.

The Brotherhood met with the Corporation to discuss the matter but no agreement was reached. Effective with the 2000 Fall Change of Time the Corporation advertised this assignment as "Moncton to Halifax, via Windsor Junction".

The Brotherhood grieved the issue alleging the new run format was in violation of the collective agreement, specifically but not limited to, article 10 - Called for Straight Away or Turnaround Service (presently article 251) and article 11 - Service at Terminals and Switching at Turn-Around Points - Passenger Service (presently article 9).

The Corporation disagrees with the Brotherhood's position.

FOR THE BROTHERHOOD:

(SGD.) C. I. SMITH

FOR: GENERAL CHAIRMAN

There appeared on behalf of the Corporation:

E. J. Houlihan - Senior Manager, Labour Relations, Montreal

A. Livingstone - Manager, Customer Services

G. Benn - Labour Relations Officer, Montreal

A. Iacono - Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

R. Leclerc - General Chairman, Grande-Mère
G. Hallé - Canadian Director, Ottawa
C. I. Smith - 1st. Vice-General Chairman,

AWARD OF THE ARBITRATOR

The facts in relation to this grievance are not in dispute. Trains operating from Moncton to Halifax have traditionally been turned around at Halifax as part of the crew's assignment. Generally, turning the train around involves taking the empty train, after the passengers and on board personnel have detrained and all baggage is removed, around the container pier loop in Halifax. It is agreed that a standard three hour payment, continuous with the road tour, has been agreed to as payment for that work. On very rare occasions, said to arise perhaps once or twice a year, the train cannot be turned and properly spotted in Halifax by using the container pier loop. On those occasions the train must be backed out of the Halifax station, beyond the yard switching limits, to Windsor Junction from where it can be wyeed and backed into Halifax in position for the train's departure on the next day.

For a period of time the Corporation paid crews required to back and wye their train at Windsor Junction an additional day's pay. The Brotherhood submits that such payment was properly owing under the provisions of article 9.3 of the collective agreement which reads as follows:

9.3 Locomotive engineers in passenger service used out of or at initial or final terminal to perform service other than that in connection with their train, before commencing or after completing trip, will be allowed a separate day for such work. It is understood, at terminals where no yard crew is available, that road locomotive engineers may be required to do yard passenger switching, and will be considered as in continuous service.

Concurrent with the fall change of time in 2000 the Corporation changed its practice, and bulletined train 14 from Moncton to Halifax as being "Moncton-Halifax, Halifax via Windsor Junction". It does not appear disputed that under that designation of assignment the Corporation has viewed the movement of the train from Halifax to Windsor Junction and back to Halifax as part of the same continuous assignment, on those rare occasions when it might occur. It has therefore not paid an

additional day for that service, but rather has treated that work as being considered in continuous service, and therefore on the same basis of the yard passenger switching as occurs when the train is reversed by running around the container pier loop.

In the Arbitrator's view to succeed in this grievance the Brotherhood must establish that the handling of the train through Windsor Junction, over a total distance of some thirty miles, is work which the crew performs that is not in connection with their train. That, indeed, is the argument of the Brotherhood's representative. With that submission the Arbitrator has some difficulty.

Firstly, it is well established in the jurisprudence of this Office that turning a passenger train at the objective terminal after passengers have detrained is work in relation to the incoming crew's own train. That was clearly the finding of the arbitrator in **CROA 2067**. That case involved incoming crews arriving at Montreal being required to wye their train after the passengers, on-board crew and baggage had left the train, by operating it over the wye in Montreal and returning it to the designated place it was to assume in Central Station. While in that case the assignment was partly motivated by concerns respecting ventilation in the station, the decision, which issued on November 16, 1990 was clear in its conclusion, which stated in part: "... I am satisfied that the turning of the passenger equipment on the wye at Montreal may fairly be characterized as work in connection with a locomotive engineer's train, ...".

On the basis of the foregoing, the Arbitrator cannot agree with the submission of the Brotherhood's representative to the effect that turning the train at Halifax at the conclusion of the Moncton-Halifax is not work in connection with the incoming crew's own train. Nor, in my view, does the fact that the wying of the train must take place over a greater territory, extending beyond the outer switch of the Halifax yard, change the essential characterization of the work being performed.

Secondly, it is well established that it is within the prerogatives of the Corporation to establish an assignment so that it might involve a train arriving, departing and returning again to the objective station. That, for example, was the nature of the assignment reviewed in **CROA 208**, which involved the movement of a train from Portland, Maine to Gorham in New Hampshire, thence to Berlin New Hampshire and back to Gorham, as involving a single continuous service.

In the instant case, having regard to the language of article 9.3 of the collective agreement, it cannot be said that the locomotive engineers who are the subject of this grievance are used out of the final terminal via Windsor Junction to perform service other than that in connection with their train. In that circumstance they are in continuous service and have been properly compensated in accordance with the collective agreement. The movement in question does not, therefore, attract a separate day's pay for the work in question. On that basis the grievance must be dismissed.

September 19, 2003

(signed) MICHEL G. PICHER
ARBITRATOR