

**CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 3387**

Heard in Montreal, Wednesday, 10 December 2003

concerning

VIA RAIL CANADA INC.

and

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
EX PARTE**

DISPUTE:

Penalty claim - earnings deducted while available for duty.

BROTHERHOOD'S STATEMENT OF ISSUE:

On January 22nd, 2002, Locomotive Engineer Morin returned from the sick list at approximately 11:00 hours.

He was held off the spare working list for 12 hours and placed on it in accordance with article 54.13 of the collective agreement.

He was deducted earnings by the CMC for a return trip that went out on January 23rd and returned January 24th, although he was available and not called.

The Brotherhood disagrees with the penalty.

Remedy sought: that Engineer Morin be made whole.

FOR THE BROTHERHOOD:

(SGD.) J. R. TOFFLEMIRE

GENERAL CHAIRMAN

There appeared on behalf of the Corporation:

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

G. Benn - Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

J. R. Tofflemire - General Chairman, Oakville

E. MacKinnon - Local Chairman, Montreal

R. Theriault - Local Chairman, Ottawa

R. Dyon - General Chairman, Montreal

AWARD OF THE ARBITRATOR

The facts in relation to this grievance are not in dispute. Locomotive Engineer B. Morin booked sick at 06:28 on January 22, 2002. He then called the Crew Management Centre at 11:00 to advise that he was well and wished to be returned to the spare board. In that circumstance the Corporation applied what is now article 211.13 of collective agreement 1.4. That provision reads as follows:

211.13 Locomotive engineers assigned to the spare board who book sick or obtain leave of absence when called will not have their names restored to the spare board until 12 hours after they report for duty when their names will be placed at the foot of the spare board.

In accordance with the foregoing provision Mr. Morin's name was restored to the spareboard 12 hours after he called in to return to duty and his name was duly placed at the bottom of the spare board. As a result of that adjustment the grievor was not first out for an assignment which he would otherwise have received. On January 23, Locomotive Engineer Lalonde, who was previously second on the spare board behind Mr. Morin was called to work trains 65/56. In that circumstance the Corporation reduced the grievor's monthly guarantee by the number of hours worked by Mr. Lalonde. That resulted in an effective loss of 16.12 hours from the grievor's guarantee.

The Brotherhood submits that the Corporation could not penalize the grievor as it did. It's representative argues that any assignment missed by the grievor which could count in reduction of his monthly guarantee must be an assignment that falls within the twelve hour penalty period described in article 211.13 of the collective agreement. The Corporation maintains that the penalty period contained in that provision has no bearing on the merits of the grievor's treatment in the case at hand. It's representative maintains that the action of the Corporation was wholly in compliance with the provisions of what was article 17(a) of Mackenzie award, now reflected as article 3.13(a) of collective agreement 1.4.

Article 3.13 of collective agreement 1.4 reads as follows:

3.13 Locomotive engineers who miss work opportunities for the following reasons:

(a) Leave of absence because of sickness, injury or personal reasons;

(b) Suspension as part of disciplinary actions;

(c) Failing to exercise seniority within eight hours of a displacement,

Will have their guarantees reduced by an amount equal to the hours earned by the locomotive engineer who replaced them.

Upon a review of the facts and the collective agreement provisions in question, the Arbitrator is satisfied that the position of the Corporation must prevail. At issue is whether Mr. Morin missed work opportunities by reason of a leave of absence "... because of sickness". As a spare board employee his work opportunities depended entirely upon his placement on the spareboard. In accordance with article 211.13 of the collective agreement, when he booked sick on January 22nd and thereafter booked back on as fit to work later the same day, he was subject to the impact of article 211.13. That article contains two consequences: firstly the employee is not returned to the spare board for a period of twelve hours following his return from illness; secondly, he is then placed at the bottom of the spare board. It is as a consequence of the second condition that Mr. Morin missed the work opportunity which he otherwise would have had, namely the work on trains 65/56 worked by Mr. Lalonde, who had previously stood behind Mr. Morin on the spare board list.

In the Arbitrator's view the facts fall squarely within the language of article 3.13: the grievor had a leave of absence because of sickness. As a consequence of that leave of absence and the operation of article 211.13 of the collective agreement he missed the work opportunity which was eventually assigned to Mr. Lalonde. In that circumstance, he is clearly liable to the application of the final paragraph of article 3.13, which is to say that he was then to have his guarantee reduced "by an amount equal to the hours earned by the locomotive engineer who replaced [him]." The Arbitrator has no alternative but to conclude that on the facts of the case at hand Mr. Lalonde clearly replaced Mr. Morin in the spare board standing, and ultimately in the assignment for trains 65/56 undertaken by Mr. Lalonde. His guarantee is then to be reduced by the hours earned

by Mr. Lalonde, who replaced him. The fact that the replacement may have occurred outside the twelve hour period described in article 211.13 is immaterial to the operation of article 3.13 of the collective agreement.

In all of the circumstances no violation of the terms of the collective agreement is disclosed. The grievance must therefore be dismissed.

December 15, 2003

(signed) MICHEL G. PICHER
ARBITRATOR