CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 548

Heard at Montreal, Tuesday, May 11th, 1976

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Time claim in the amount of 415 miles at passenger rates submitted by Locomotive Engineer W. McClurg of Toronto, Ontario.

JOINT STATEMENT OF ISSUE:

On November 11 1974, Locomotive Engineer McClurg was regularly assigned to Turbo Trains No. 66 and 67 between Toronto and Montreal.

On November 10, 1974, because of labour problems in Montreal which were disrupting passenger train service between Montreal and Toronto, Locomotive Engineer McClurg was properly advised that his regular assignment on the Turbo Train was cancelled.

On November 11, 1974, the labour situation improved and the Company was able to resume quasi-normal passenger service operation in the afternoon of November 11, 1974. Consequently, it operated Train 67 from Montreal to Toronto with a spare Montreal engine crew.

The Brotherhood maintains that the Company violated Article 94 of Agreement 1.1 when it did not arrange for Locomotive Engineer McClurg to operate Train 67 from Montreal to Toronto and supports the employee's claim for 415 miles, which constitutes loss of earnings.

The Company denied the rule violation and has declined the claim.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD.) J. B. ADAIR	**(SGD.) S. T. COOKE**
GENERAL CHAIRMAN	**ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS**

There appeared on behalf of the Company:

G. A. Carra	– System Labour Relations Officer, Montreal
M. Delgreco	– System Labour Relations Officer, Montreal
G. G. Lehman	– Trainmaster Passenger Service, Toronto
M. Joannette	– Regional Coordinator of Crews, Toronto

And on behalf of the Brotherhood.

J. B. Adair	– General Chairman, St. Thomas
E. J. Davies	– Vice President, Montreal
D. Gillott	– Local Chairman, Ottawa

AWARD OF THE ARBITRATOR

Article 94 of the collective agreement is as follows:

94.1 A Locomotive Engineer assigned to a regular run will, if available, follow his assignment.

The grievor was assigned to a regular run. In the normal course he would have operated Train No. 66, departing Toronto on Sunday, November 10, 1974 at 16:30 hours, and, by way of a return trip, Train No. 67, departing Montreal on Monday, November 11, 1974 at 16:30 hours.

Because of a disruption in service for which neither of the parties can be said to have been responsible, the grievor's assignment was cancelled, and he was so advised. It appears that on the morning of November 1 the grievor, who was in Toronto, advised the Company of his availability. At that time, it seems that the Company had not yet made the decision to operate Train No. 67 from Montreal to Toronto that day. The decision was, it seems, made at about 9.30 a.m., and it was decided that a Montreal crew would be called.

It may have been possible, even then, for the Company to have made arrangements to deadhead the grievor by air to Montreal in order to take out Train No. 67 that day. Where Article 66.6 refers to "public transportation" it may be that travel by air is included, although it is not necessary to decide that point in this case. The question is whether the Company was obliged to arrange for the grievor, whose home terminal was Toronto, to be in Montreal to take out Train No. 67 on November 11. It may be noted, although it is not necessarily a decisive point, that the call in Montreal was for 13:45 hours, since the train was on the storage track.

The matter is to be determined having regard to the provisions of the collective agreement, and I do not give consideration to the terms of another agreement, negotiated by the parties but never executed, which would have dealt *inter alia*, with a similar problem in express terms. It has been noted in other cases that the mere fact that one of the parties has sought to negotiate a particular provision in express terms does not necessarily require the conclusion that the existing agreement would not permit a similar result.

However this may be, it is my view that Article 94 does not have the effect here claimed by the Union. The grievor's assignment was indeed cancelled, and he may or may not have had certain entitlements, or been able to exercise certain rights, in that event. His assignment constituted, I find two trips, one on Train 66 and a return trip on Train 67. The requirement of availability is one applying to the whole assignment, and not part of it. I agree with the Company's argument in this respect: to accept the Union's contention would be to read into the article an absolute right of an engineer to operate the return leg of an assignment irrespective of whether the first leg operated or whether he was available for it. An assignment begins at the home terminal. Whatever practice may have arisen in certain cases of deadheading the regular employee to operate the second leg of an assignment where the first leg did not operate, the Company is not bound to follow such a practice in this case.

Here, the assignment, consisting of an outward and a return trip, was cancelled, so that Article 94 did not apply. In view of the brief period between the decision to operate Train 67 and the time for which the crew was called it may be doubted if the grievor could really be said to be "available", even travelling by air, but I do not decide the case on that ground. Rather, as I have noted, it is my view that Article 94 did not apply in these particular circumstances.

Accordingly, the grievance is dismissed.

(sgd.) J.F.W. WEATHERILL
ARBITRATOR