CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1765

Heard at Montreal, Thursday 10 March 1988

Concerning

CANADIAN NATIONAL RAILWAY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of the Brotherhood concerning the alleged violation of Article 114 and associated time claims for deadheading.

JOINT STATEMENT OF ISSUE:

Prior to November 27, 1986, Trains 341-340 operated Stellarton to Truro in turnaround service. On that date the trains commenced operating Truro to Stellarton in turnaround service.

The Brotherhood contends that this change is a change in Home Stations and that a notice should have been served pursuant to Article 114.1 "Adverse Effects of Changes in Working Conditions". It is also contended, as a result of the violation of Article 114.1, claims submitted for deadheading between Stellarton and Truro are valid.

The Company denied the claims.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) G. HALLÉ	(SGD.) D.C. FRALEIGH
GENERAL CHAIRMAN	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. B. Bart	– Manager Labour Relations, Montreal
A. E. Heft	– Labour Relations Officer, Montreal
J. E. Pasteris	– Labour Relations Officer, Montreal
D. E. Lussier	– Coordinator Transportation Special Projects, Montreal

And on behalf of the Brotherhood:

G. Hallé	– General Chairman, Quebec
P. Seagris	– General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

The Brotherhood's claim in the instant case must depend on the application of Article 114.1 which provides, in part, as follows:

> **114.1** Prior to the introduction of run-throughs or changes in home stations, or of material changes in working conditions which are to be initiated solely by the Company and would have significantly adverse effects on engineers, the Company will:
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> **(a)** negotiate with the Brotherhood measures to minimize any significantly adverse effects of the proposed change on locomotive engineers, but such measure shall not include changes in rates of pay, and
>
> **(b)** give at least six months' advance notice to the Brotherhood of any proposed change, with a full description thereof along with details as to the anticipated changes in working conditions.
>
> **(i)** The changes proposed by the Company which can be subject to negotiation and arbitration under this Article 114 do not include changes brought about by the normal application of the collective agreement, changes resulting from a decline in business activity, fluctuations in traffic, reassignment of work at home stations or other normal changes inherent in the nature of the work in which engineers are engaged.

The Arbitrator finds it unnecessary to decide whether the facts disclose a change in home station, as alleged by the Brotherhood. While it is arguable that the use of the term "home station" in the instant Collective Agreement should be construed to have the same meaning as has been found in other Collective Agreements in the railway industry (*see* ***CROA 332, 645, 1444***) this case may be entirely disposed of on a different basis.

Article 114.1 comes into effect whenever there is a material change in working conditions initiated solely by the Company, with adverse effects on engineers. It is not disputed that in April of 1986 the very adjustment that gives rise to the instant grievance, namely the assignment of runs from Truro to Stellarton in turnaround service, for engineers whose home station is Stellarton, resulted in the payment of taxi expenses as well as a claim for 164 road miles plus fifteen minutes initial and fifteen minutes final, as a result of an agreement between the Company and the Brotherhood. I am satisfied, on the balance of probabilities, that that arrangement was acceded to by the Company because it agreed that the transfer of turnaround service to commence in Truro constituted a material change in working conditions within the meaning of Article 114.1 of the Collective Agreement.

In **CROA 1444** the Arbitrator stated that the burden is upon the Company to establish that the circumstances justify the application of the exceptions set out in subparagraph (i) of Article 114.1. Given the history in the instant case, and in particular the apparent recognition on the part of the Company of the merit of the Brotherhood's claim on a prior occasion, I cannot conclude that that burden has been discharged.

For these reasons the grievance must be allowed. The claims submitted for deadheading between Stellarton and Truro are therefore to be paid, forthwith. The Arbitrator remains seized of this matter in the event of any further dispute with respect to the interpretation or implementation of this award.

(signed) MICHEL G. PICHER
ARBITRATOR