

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2452

Heard in Montreal, Wednesday, 9 February 1994

concerning

VIA RAIL CANADA INC.

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[BROTHERHOOD OF LOCOMOTIVE ENGINEERS]**

DISPUTE:

Claim on behalf of Locomotive Engineer T.R. Bentz, under the provisions of Addendum 31, Section C of the collective agreement, for cleaning windows on his locomotive on May 8, 1993.

JOINT STATEMENT OF ISSUE:

On May 8, 1993, Locomotive Engineer Bentz cleaned the windows of his locomotive, He submitted a time claim for 30 minutes, but was compensated only 15 minutes.

The Brotherhood contends that performing window cleaning of a locomotive should be paid for on a minute basis in accordance with Addendum 31, Section C of the collective agreement.

The Brotherhood requests the claim be paid as submitted.

It is the Corporation's position that the grievor was properly compensated for the duties performed and the Corporation declines the claim.

FOR THE BROTHERHOOD:

(SGD.) W. A. WRIGHT
GENERAL CHAIRMAN

FOR THE CORPORATION:

(SGD.) C. C. MUGGERIDGE
DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

- A. Watson – Senior Labour Relations Officer, Montreal
- K. Taylor – Senior Advisor and Negotiator, Labour Relations, Montreal

And on behalf of the Brotherhood:

- W. A. Wright – General Chairman, Saskatoon
- M. Simpson – Senior Vice-Chairman, Saskatoon

AWARD OF THE ARBITRATOR

The issue in this grievance is narrow, and concerns whether the grievor, Locomotive Engineer Bentz, was entitled to the payment of his claim for thirty minutes for time expended in cleaning the windows of his locomotive, or whether he was adequately compensated by the payment of fifteen minutes, as contended by the Corporation. The claim is under Section C of Addendum No. 31 of the collective agreement. It provides, in part, as follows:

At points where equipment maintenance staff is not available, when duties other than those delineated in Section B hereof or those arising therefrom, are performed by locomotive engineers, the Company will pay for the time so occupied on the minute basis over and above time paid for other service. In other words, the Company may require a locomotive engineer to report for duty in advance of the normal time required to report for duty and pay for such time or if the other duties are performed after the locomotive engineer comes on duty he will be paid for all such reasonable time in addition to pay for other service. The duties here referred to can broadly be described as those which are essential in order that a train may proceed without unnecessary delay.

During the course of the hearing it became apparent that the parties are not disagreed, in principle, on the application of the foregoing provisions to the circumstances of a locomotive engineer. The Corporation does not dispute that a locomotive engineer is entitled to be paid for the time actually taken to clean the windows of his or her locomotive unit. The evidence discloses, however, that the Corporation made an assessment of the time that would be required for such a task at Kamloops. Based on the information available to it, it has concluded that fifteen minutes would be a reasonable time for a locomotive engineer to obtain the necessary materials, do the cleaning required and return the materials, barring extraordinary circumstances. In the Arbitrator's view it was reasonable for the Corporation to make such an assessment, and there is no evidence before me to suggest that its assessment is in fact unreasonable, as it would apply to general circumstances.

How, then, is the grievance to be resolved? In the Arbitrator's view it is important to stress that the burden of proof in a claim of this kind remains upon the Brotherhood. It must establish, on the balance of probabilities, that the claim filed by the grievor is correct and reasonable in the circumstances. In light of the representations made by the Corporation, as noted above, I am satisfied that in normal circumstances it is reasonable to expect the window washing task to be accomplished within fifteen minutes. If in fact the assignment required longer than that time, it is incumbent upon the grievor to adduce a full and credible explanation which would justify the time claimed. With respect, it is not enough for the bargaining agent to appear at an arbitration hearing and suggest that some employees may walk less quickly than others, to support a claim of this kind.

I accept, in principle, the position advanced by the Brotherhood, to the extent that it maintains that an employee is entitled to be paid, on the minute basis, for the time expended in window washing. It is implicit, however, that the time so spent must be justified as reasonable. If, for example, weather conditions, difficulty locating cleaning equipment, the effects of insects or any other factor could be advanced to explain the doubling of the time normally taken, the claim could be successful. In the case at hand there is no such explanation from the party which bears the burden of proof.

In the result, the Arbitrator is compelled to conclude that the Brotherhood has not adduced evidence to establish, on the balance of probabilities, that the period of thirty minutes was reasonable or necessary in the circumstances relating to the claim of Locomotive Engineer Bentz. For these reasons the grievance must be dismissed.

11 February 1994

(sgd.) MICHEL G. PICHER
ARBITRATOR