

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2507

Heard in Montreal, Wednesday, 13 July 1994

concerning

VIA RAIL CANADA INC.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim on behalf of Locomotive Engineer J. Strachan, account not being called for Train No. 1 on December 24, 1992.

JOINT STATEMENT OF ISSUE:

On December 24, 1992, the locomotive engineer scheduled to operate Train No. 1, Toronto, booked off for miles at 09:06 hours. At 10:00 hours, VIA Crew Office requested a CN engineer for Train No. 1, which was scheduled to depart Toronto at 12:45 hours, with an on-duty time of 12:10 hours.

There was no CN engineer available and, as a result, VIA Locomotive Engineer G.F. Fletcher was called. At the time he was working as a stand-by engineman at Toronto Station.

The grievor operated Train No. 645 from Toronto to Niagara Falls.

The Brotherhood contends that the Corporation violated article 54.11 of collective agreement no. 1.1, since Mr. Strachan was first up on the locomotive engineer's spareboard and was not called for Train No. 1. The Brotherhood requests Mr. Strachan be compensated for the difference between his earnings for Train No. 645 and what he would have earned for Train No. 1 on December 24, 1992.

It is the Corporation's position that there was no violation of the collective agreement and it has declined the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) C. HAMILTON
GENERAL CHAIRMAN

FOR THE CORPORATION:

(SGD.) K. TAYLOR
for: DEPARTMENT DIRECTOR,
LABOUR RELATIONS & HUMAN RESOURCES

There appeared on behalf of the Corporation:

K. Taylor – Senior Advisor and Negotiator, Labour Relations, Montreal

And on behalf of the Brotherhood:

C. Hamilton – General Chairman, Toronto

AWARD OF THE ARBITRATOR

On the facts disclosed, the Arbitrator is left in some doubt as to the merits of the case advanced by the Corporation. It is not disputed that, in pursuance of an understanding with the Brotherhood, the Corporation maintains a stand-by engineman at the Toronto Station during the Christmas holiday period. On December 24, 1992 Mr. G.F. Fletcher was the stand-by engineman at Toronto Station. Both Mr. Fletcher and the grievor, Locomotive Engineer J. Strachan, are drawn from the fourth seniority district. The assignment in question involved the operation of Train No. 1 over the sixth seniority district, north of Toronto.

In the Arbitrator's view if the Corporation could establish that the circumstances were emergent, the assignment of the work in question to Mr. Fletcher over Mr. Strachan would be seen to be justified. In fact, however, the evidence suggests that the time involved in the call to duty of Mr. Fletcher was such that no real emergency necessitated his being assigned to Train No. 1. There would, in other words, have been no greater disruption to the Corporation to call Mr. Strachan, who was first up on the locomotive engineers' spareboard. What the reality of the case discloses is that the Corporation had ample time to assign an engineman to Train No. 1, that it had two locomotive engineers from seniority district no. 4 available to it, and that it chose to assign Mr. Fletcher. Because the assignment was not of an emergent nature, I am satisfied that what happened, in effect, was the preferential calling of one locomotive engineer from seniority district 4 over another, in a manner not contemplated by the collective agreement.

For the foregoing reasons the grievance is allowed. The Arbitrator directs that Mr. Strachan be compensated for the difference between his earnings for Train No. 645, and the wages he would have earned for Train No. 1 on December 24, 1992.

15 July 1994

(signed) MICHEL G. PICHER
ARBITRATOR