CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2555

Heard in Montreal, Wednesday, 14 December 1994

concerning

VIA RAIL CANADA INC.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

Claims on behalf of Locomotive Engineers W.A. Currie and D.J. Pinnell, for not being called on March 29 and 30, 1993, and April 1st and 13, 1993.

BROTHERHOOD'S STATEMENT OF ISSUE:

On March 29, 30 and April 1, 1993, Train 14 operated from Moncton to Halifax. When the train arrived at Halifax Station on those days, the passengers were disembarked, after which the crew assigned to operate the train then took it to the Halifax Maintenance Centre by turning it at Windsor Junction, because the Halterm loop was not operational.

On April 13, 1993, Train 12 operated from Moncton to Halifax, passengers disembarked at Halifax Station and the crew then turned the train at the Halterm loop as normal.

In all of these cases the crew that operated the train from Moncton to Halifax was the same crew that turned it.

The Brotherhood contends that the normal operation of VIA Train No. 12 when it arrives and terminates at Halifax is for the train and engine crew to remain on duty in order to turn the train, but that since the Halterm loop was out of order, a passenger Extra was created which should have been manned by the Halifax spareboard, specifically Messrs. Currie and Pinnell.

The Brotherhood requests that Messrs. Currie and Pinnell be paid as requested.

It is the Corporation's position that there was no violation of the collective agreement in this case. The Corporation declines the Brotherhood's claim.

FOR THE BROTHERHOOD:

(SGD.) B. E. WOOD
GENERAL CHAIRMAN

There appeared on behalf of the Corporation:

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

And on behalf of the Brotherhood:

B. E. Wood	– General Chairman, Halifax

AWARD OF THE ARBITRATOR

The claim of the Brotherhood in the case at hand depends upon the application of an agreement referred to as "Addendum 16". It is a three-way agreement among the Canadian National Railway Company, VIA Rail and the Brotherhood which provides, in part, that the first call for spare work required by VIA Rail is to be made available to locomotive engineers provided by CN. The grievors in the case at hand are CN locomotive engineers who claim that the work performed by the crew of Train 12, following its arrival at Halifax, should have been assigned to them. The Brotherhood's theory is that the assignment was in effect the staffing of an extra train, characterized by the Brotherhood as a work extra, which should have been treated as a spare assignment.

The Corporation submits that the issue as framed is not arbitrable, to the extent that it is not the employer of the grievors. Its representative argues that the complaint, if any, should be made to the Canadian National Railway Company, which employs the grievors.

On the issue of the arbitrability of the grievance the Arbitrator cannot sustain the position of the Corporation. Clearly, on the face of Addendum 16, the Corporation has bound itself to an agreement with the Brotherhood with respect to the calling of spare crews, when such crews are found by the employer to be needed. It would seem to me, as a matter of principle, that the Brotherhood must have access to arbitration to enforce the addendum in circumstances where it can establish that the Corporation has violated the obligation which it bears under the terms of that agreement. In light of the privity of contract between the Brotherhood and the Corporation, I am satisfied that Addendum 16 is part of the documents that make up the collective agreement between the parties and that any violation of its terms by VIA Rail in the calling of crews represented by the Brotherhood can be pursued to arbitration. This aspect of the Corporation's submission must, therefore, be rejected.

Is there a violation of Addendum 16 disclosed in the case at hand? I think not. There is nothing to be found within the language of Addendum 16, nor of any other document to which the Arbitrator has been referred, to sustain the position of the Brotherhood that the Corporation was under an obligation to treat the turning of Train 12 as an assignment to be awarded to spare employees within the meaning of Addendum 16. What the addendum provides is the pecking order to be followed for the calling of locomotive engineers when the Corporation does decide spare crews are required. However, there is nothing in the addendum to prevent it from making a contrary decision, and, as in the case at hand, assign to the work in question to the crew of its employees who had completed a passenger run into Halifax.

It is not disputed that it is normal practice for such crews to turn their train on the Loop. In the circumstances disclosed, because the Loop was not operational, a different routing was assigned to them, requiring a longer period of work. However that may be, there is nothing before the Arbitrator to substantiate that the Corporation was required to declare or establish a spare assignment or call a spare crew to perform it. While it is, of course, open to the parties to negotiate terms within their collective agreement which would circumscribe the discretion of the employer in respect of crewing it would, in the Arbitrator's view, require clear and unequivocal language to sustain the submission that a particular circumstance obligates the Corporation to treat a particular assignment as a spare assignment for the purposes of Addendum 16, thereby limiting its ability to assign the equivalent of overtime or additional work to regular crews. No such language is disclosed in the material before me. There has, therefore, been no violation of Addendum 16 or of the collective agreement

For the foregoing reasons the grievance must be dismissed.

16 December 1994

(signed) MICHEL G. PICHER
ARBITRATOR