

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2794

Heard in Calgary, Thursday, 14 November 1996

concerning

**CANADIAN NATIONAL RAILWAY COMPANY**

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS  
(BROTHERHOOD OF LOCOMOTIVE ENGINEERS)**

### **DISPUTE:**

Claim on behalf of Locomotive Engineer T.M. Befurt of Kamloops, B.C. for loss of earnings account Mr. Befurt not permitted to work beyond Blue River through to Jasper Alta. on VIA train no. 2.

### **JOINT STATEMENT OF ISSUE:**

VIA Train No. 2 Assignment which operates between Kamloops, B.C. and Jasper, Alberta is crewed by VIA locomotive engineers home-stationed at Kamloops. On January 2, 1994, CN Locomotive Engineer Befurt was canvassed by CN Crew Management Centre and accepted a call to work VIA Train No. 2. At Blue River a Jasper locomotive engineer worked VIA train no. 2 from Blue River to Jasper.

The Brotherhood contends that in accordance with agreement 1.2, past practice, letters of understanding and calling procedures for CN employees to crew VIA trains, Mr. Befurt should properly have followed the assignment to Jasper. When the Company did not allow Locomotive Engineer Befurt to follow VIA train no. 2 to Jasper he suffered a loss of earnings for the trip in question as well as the general holiday.

The Company disagrees.

### **FOR THE COUNCIL:**

**(SGD.) M. S. SIMPSON**  
**FOR: GENERAL CHAIRMAN**

### **FOR THE COMPANY**

**(SGD.) J. TORCHIA**  
**FOR: SENIOR VICE-PRESIDENT, WESTERN CANADA**

There appeared on behalf of the Company:

J. Dixon – Assistant Manager, Labour Relations, Edmonton  
S. Michaud – Labour Relations Officer, Edmonton  
S. Blackmore – Labour Relations Officer, Edmonton

And on behalf of the Council:

W. A. Wright – General Chairman, Saskatoon  
M. W. Simpson – Senior Vice-Chairman, Saskatoon  
D. J. Shewchuk – Vice-Chairman, Vancouver  
D. E. Brummund – Local Chairman, Kamloops

### AWARD OF THE ARBITRATOR

The Arbitrator can find nothing within the language of the collective agreement to sustain the claim advanced by the Council. It does not appear disputed that VIA Rail has a pool or spareboard at Kamloops for its own home-stationed locomotive engineers. When that source of manpower is depleted, it can call upon the Company to provide a locomotive engineer, it being understood that any locomotive engineer requested to perform such work by the Company's Crew Management Centre is free to decline.

On January 2, 1994 the grievor was called at home and offered the opportunity to operate VIA train no. 2 from Kamloops, B.C. to Jasper, Alberta in straight-away service. Shortly thereafter, however, he was called again at his home and was told that the call would be for a trip from Kamloops to Blue River, rather than Jasper, a shorter trip. He accepted the work, duly reported and worked the train from Kamloops to Blue River, from whence he deadheaded back to Kamloops.

It should be stressed that the instant case is not advanced on the basis of the called and cancelled provisions of the collective agreement. Rather, the Council argues that by prior agreement and understanding, Locomotive Engineer Befurt was entitled to handle the VIA train to its ultimate destination of Jasper, even though such a trip would involve service over the full length of two subdivisions. The Council relies, in substantial part, on the content of letters addressed to the Council by the Company in the earliest days of VIA Rail operations. For example, in a letter to the Council's General Chairman in August of 1988 the Company's Senior Vice-President for Western Canada wrote, in part:

... Should the employee accept the call, the conditions of the assignment will prevail. ...

A subsequent letter of understanding, dated January 16, 1991, reads as follows:

This has reference to the meeting held on January 9, 1991 in connection with CN locomotive engineers providing relief at VIA Rail pursuant to the understandings dated July 20 and September 30, 1987. These understandings govern the filling of vacancies on a tour of duty basis and the filling of temporary vacancies of seven calendar days or more, at locations where VIA does not maintain a spareboard.

During the meeting, discussion centered mainly on the application of these understandings in view of the changes effected in VIA Rail passenger operations in 1990, which involved the introduction of run-throughs as well as changes in certain home stations. The Brotherhood holds the view that CN locomotive engineers providing relief on vacancies at VIA Rail should complete such assignments as established by VIA Rail, irrespective of the run-throughs which have been implemented at many locations. The Company pointed out that these locomotive engineers are governed by the provisions of the applicable collective agreements in effect on CN (Agreement 1.1 and 1.2). It further pointed out that it had not been a party to any of the arrangements made between VIA Rail and the Brotherhood in implementing the new run-throughs, etc. However, notwithstanding the fact that these changes were not implemented in respect of CN's operations, the Company indicated that it was prepared to apply the above-mentioned understandings in the manner requested by the Brotherhood.

Therefore, this letter will confirm that in the application of the aforementioned understandings CN locomotive engineers providing relief on vacancies at VIA Rail will complete assignments, i.e., follow assignments through, as established by VIA Rail.

It is understood and herein confirmed that this arrangement is without prejudice to either parties [sic] position, and that the matter may be subject to further review as deemed necessary by either party.

Further letters, dated January 22, 1991 and February 13, 1991 confirm the Company's acceptance of the principle that its locomotive engineers operating on loan to VIA Rail would be authorized to "... follow the assignment through as established by VIA Rail", even though to do so could apparently have violated the normal subdivision travel restrictions under which the Company's locomotive engineers would otherwise operate.

In the Arbitrator's view the Council has misconstrued the purpose and scope of the letters upon which it relies. Those agreements were necessary to make it possible for CN locomotive engineers to undertake road trips in the service of VIA Rail where to do so would carry them beyond the subdivision limits to which they would normally be restricted under the terms of their own collective agreement. The Arbitrator can see nothing in those letters which is tantamount to a guarantee given to the Council that locomotive engineers assigned to work in the service of VIA Rail would necessarily operate the VIA trains in question over more than one subdivision to their ultimate destination. A better characterization of those letters is to say that where required, the Company's locomotive engineers on loan to VIA Rail could operate VIA's trains to their ultimate destination, without offending the terms of their own collective agreement, but not that the locomotive engineers in question necessarily have an absolute right to be so assigned.

In support of that conclusion, the evidence tendered by the Company confirms that it is not uncommon for its locomotive engineers at Kamloops to be pressed into service for VIA Rail for trips over a single subdivision to Blue River, as well as for trips over two subdivisions to Jasper. It would appear that in the period between October of 1992 to December of 1994 the assignments to Blue River were in fact more frequent than those to Jasper.

In the result, the Arbitrator must accept the characterization of what transpired advanced by the Company. Locomotive Engineer Befurt was called, albeit initially for service to Jasper, and thereafter advised, before he left home, that the call was in fact for Blue River. He was then under no obligation to accept the call for the reduced trip. For reasons which he best appreciates, however, he did so. As noted above, there is no language within the terms of the collective agreement, nor within the letters of understanding governing the loan of Company locomotive engineers to VIA, which supports the Council's assertion that locomotive engineers seconded to VIA Rail can assert an absolute right to handle a VIA train to its ultimate destination. While the language of those letters is permissive, it is not obligatory.

On the whole, therefore, the Council has not demonstrated any violation of the terms of the collective agreement, nor of any letter of understanding. There is, as a result, no basis upon which the grievor can claim compensation for an assignment from Kamloops to Jasper, nor for an increment in his general holiday claim as a result of the assignment on January 2, 1994. The grievance must therefore be dismissed.

November 16, 1996

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**