CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2977

Heard in Montreal, Thursday, 10 September 1998

concerning

VIA RAIL CANADA INC.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

Violation of article 54.11 of agreement 1.1 – calling procedures and spare board rotation.

EX PARTE STATEMENT OF ISSUE:

On September 13, 1996 the Corporation issued a notice to the Brotherhood and employees which changed the working conditions for spare employees, specifically the calling procedures and method of rotation which resulted in violations to the provisions contained in the collective agreement.

In response, grievances were filed by the Unions on behalf of all affected employees.

The parties have not been successful in resolving this dispute.

The Corporation has not responded to the Brotherhood's appeal.

FOR THE BROTHERHOOD:

(SGD.) J. H. TOFFLEMIRE
GENERAL CHAIRMAN

There appeared on behalf of the Corporation:

E. J. Houlihan	– Senior Manager, Labour Relations, Montreal
F. Hebert	– Manager, Terminals, Montreal

And on behalf of the Brotherhood:

J. H. Tofflemire	– General Chairman, Oakville
M. Grieve	– Local Chairman, Toronto

AWARD OF THE ARBITRATOR

The instant dispute arises as a result of the implementation of the award of Mr. Justice Mackenzie, dated June 15, 1995. The Mackenzie award introduced, for the first time, the concept of days off into running trades service, both for assigned employees as well as for spare employees. The parties are disagreed as to how the concept of approximately two days off in each calendar week is to be dove-tailed with the traditional operation of the spareboard.

Initially, apparently for the first year following the Mackenzie award, the Corporation analogized days off to absences by reason of sickness or other authorized absences, and placed the employee in question at the bottom of the spareboard when he or she was removed from service for any reason other than booking rest. It is common ground that the traditional practice with respect to booking rest has been that an employee does not lose his or her place on a spareboard during the rest period, and is in fact held at the top of the board should the employee's turn reach that position during the period of rest.

For reasons relating to productivity and the equal distribution of work, the Corporation developed concerns that placing employees at the bottom of the spareboard because of their absence for days off caused problems. It therefore decided to change the practice of spareboard calling, whereby it now treats days off as analogous to booked rest. As a result, spareboard employees on their scheduled days off do not lose any relative spareboard position by reason of their being off. Rather, they continue to maintain their position, moving upwards on the spareboard, until they reach the first turn out. If they should continue to be on days off at that point, they are allowed to resume the first out position upon their return to work.

It is the foregoing practice which the Brotherhood grieves. It submits that there is nothing in the Mackenzie award, nor in article 54.11 of collective agreement 1.1 which allows the Corporation to so administer the spareboard rotation.

Article 54 of the collective agreement provides, in part, as follows:

> **54.11** Locomotive engineers assigned to the spareboard will be run first-in first-out in order from their release from previous duty and, if qualified and available, entitled to:
>
> **(a)** All relief work consistent with articles 49 and 53;
>
> **(b)** Extra yard and transfer service;
>
> **(c)** Extra road service when locomotive engineers assigned to a pool or chain gang service are not available.
>
> **NOTE:** On the Sixth Seniority District, the arrival time at terminals or change off points will be used to determine relative standing for locomotive engineers in road service, rather than the off duty time at the shop track or change off point.
>
> **54.12** Locomotive engineers assigned to the spare board who are not available when called will have their names placed at the foot of the spare board 12 hours after the time at which called.
>
> **54.13** Locomotive engineers assigned to the spare board who book sick, or obtain leave of absence, will not have their names restored to the spare board until 12 hours after they report for duty, when their names will be placed at the foot of the spare board.
>
> **54.14** Locomotive engineers assigned to the spare board who have been on leave of absence or booked sick for 72 hours or over will have their names placed at the foot of the spare board as soon as they report ready for duty.

As can be seen from the foregoing, there are a number of specific circumstances in which locomotive engineers are placed at the foot of the spareboard. Significantly, there is nothing in the collective agreement which provides that employees who have booked rest, or who, under the new provisions issued by Mr. Justice Mackenzie, have taken their days off, are to be placed at the foot of the spareboard. On a plain reading of article 54.11 of the collective agreement, therefore, the Corporation does not appear to be in violation of any provision which requires that employees returning from days off be placed at the foot of the spareboard.

The Brotherhood's representatives refer to that part of the Mackenzie award which states "where no amendment is presented in any issue, that issue is resolved in favour of the *status quo*." They submit that the *status quo* suggests that persons who are absent for any reason are to be placed at the foot of the spareboard, and that the Corporation is without a discretion to administer spareboards in any other way.

The Arbitrator has substantial difficulty with that submission. It appears to me, upon a reading of the award of Mr. Justice Mackenzie, that there was no specific advertence to the manner in which regular days off assigned to spareboard employees would be accounted for in the continuing rotation of employee through the spareboard. Indeed, it is arguable that there is nothing in the Mackenzie award which would have required the Corporation to provide pre-arranged and regularly scheduled days off to spareboard employees, although it is obviously in the employees' interests that it has done so. By any reckoning, this would appear to be a case which must be resolved by analogous reasoning based on those provisions of the collective agreement and past practice which are clear. In the Arbitrator's view the Corporation's most recent position, which analogizes days off to the booking of rest, is the more compelling, in the circumstances.

Under the prior collective agreements, before the advent of regular days off, spareboard employees in fact had no scheduled or unscheduled days off. Rather, they worked in continuing rotation, booking rest as a means of securing time for themselves. In recognition of that reality the parties did not penalize employees in respect of their position on the spareboard by reason of the fact that they might have booked rest. It appears to the Arbitrator that it is appropriate and most consistent with the collective agreement that they be treated likewise with respect to the taking of their scheduled days off under the post-Mackenzie arrangement. The contrary alternative, which is that an employee might return to the bottom of the spareboard after two days off, and be forced to take yet another day off by reason of his or her relative position, strikes the Arbitrator as being contrary to the general intention of the Mackenzie award, and inconsistent with the parties' own past practice relating to the treatment of booking rest.

In the result, I am satisfied that the spareboard rotation system adopted by the Corporation to deal with the handling of regular days off is not contrary to any specific provision of the collective agreement, or with any part of the Mackenzie award, and is generally consistent with the parties' own past practice, as it evolved in respect of booking rest. The Arbitrator can see no compelling basis upon which to distinguish assigned rest from booked rest in the administration of the spareboard.

For all of the foregoing reasons the grievance must be dismissed.

September 11, 1998

(signed) MICHEL G. PICHER
ARBITRATOR