CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3313

Heard in Montreal, Wednesday, 11 December 2002

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE:

The issuance of District Bulletin PRN 1019/01 on April 5, 2001, pertaining to altering the proper interpretation, intent and application of article 65, paragraph 65.1 of collective agreement 1.2.

BROTHERHOOD'S STATEMENT OF ISSUE:

On April 5, 2001, the Company issued a bulletin essentially altering the intent and long standing application of article 65, paragraph 65.1 of collective agreement 1.2. In effect, the Company took a position that locomotive engineers would, at times, receive less than a two (2) hour call, contrary to the requirements found within article 65.

The Brotherhood contends that the Company must provide two (2) hour calls for locomotive engineers, when requested, except in cases of emergency.

The Company does not agree with the Brotherhood's position.

FOR THE BROTHERHOOD:

(SGD.) D. E. BRUMMUND
FOR: GENERAL CHAIRMAN

There appeared on behalf of the Company:
D. VanCauwenbergh – Manager, Human Resources, Winnipeg
J. Torchia – Director, Labour Relations, Edmonton

And on behalf of the Brotherhood:
D. E. Brummund – Sr. Vice-General Chairman, Edmonton

AWARD OF THE ARBITRATOR

The Brotherhood grieves against a bulletin concerning the calling of crews issued on the CN Prairie Division on April 5, 2001. The bulletin reads as follows:

> **SUBJECT: CALLING OF CREWS – Agreement 1.2, Article 65, Agreement 4.3, Article 106**
>
> The above noted articles both make provisions for crews to be called as far as practicable, two hours in advance of the time for which ordered. The Company will continue to endeavour to accommodate this, particularly when requested; however, due to the very nature of train operations this may not always be possible.
>
> Trains will not be delayed as a result of crews requesting a two hour call after rest has expired or if the crew is available to be called. Particularly at away-from-home terminals, crews that receive less than two hours will be expected to respond to call without delay to the train.
>
> In order to meet the demands of service, trains must operate on time and delays resulting from calls of less than two hours are unacceptable.
>
> Please be advised accordingly.

The material before the Arbitrator confirms that it is the normal practice of the Company to accord a two hour calling period to employees unless they specifically indicate that they are willing to accept a shorter call. It is also not disputed that on some occasions it becomes necessary to give a crew a call somewhat shorter than two hours. A number of factors can influence the Company's inability to meet the two hour standard, including the unavailability of employees and the number of employees who register on call book offs. Another factor is the protocol by which crew dispatchers give the employee who is first up the grace period of a twenty minute call back when the

initial call is not answered. While this list is not exhaustive, it is indicative of the kinds of factors which can, in some circumstances, make the two hour call impracticable.

Bearing in mind that the Brotherhood bears the burden of proof, there is no data before the Arbitrator to suggest that the Company has abused its obligation to utilize a two hour call insofar as is practicable as mandated under article 65.1 of the collective agreement, which provides, in part:

> **65.1** Locomotive Engineers will be called as far as practicable 2 hours in advance of the time for which ordered, except in cases of emergency. …

The Arbitrator can appreciate the concern which may motivate this grievance, to the extent that employees may have the apprehension that the Company wishes to enforce a new policy which disregards the two hour standard by unduly broadening the notion of practicability. There is, however, no objective evidence to sustain that that is the intention of the Company. On the contrary, as explained by its representatives at the hearing, it appears that the Company's concern is prompted by what it considers to be the erroneous view of some employees that the two hour calling period is an absolute right which cannot be deviated from in any circumstances. In that context the bulletin of April 5, 2001 is characterized as a reminder to employees that while the two hour call is the standard to be normally respected, given the impracticalities of any calling system, it cannot be treated as an absolute right that can be asserted in every call for which an employee has not registered a willingness to take a short call.

It is evident to the Arbitrator that if, in the future, objective evidence should be available to indicate that the Company has in fact departed from the requirements of article 65.1 of the collective agreement, or is abusing the meaning of the phrase “as far as practicable”, the Brotherhood will have the ability to pursue the matter through the grievance procedure, and progress it before this Office, if necessary. On the present state of affairs, however, it is clear that there has been no violation of the collective agreement and that the bulletin issued to the Prairie Division on April 5, 2001 is little more than a restatement of the provisions of the collective agreement and the practice which has been in place for a good number of years.

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

December 13, 2002

MICHEL G. PICHER
ARBITRATOR