CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3395

Heard in Montreal, Tuesday, 13 January 2004

concerning

VIA RAIL CANADA INC.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS
EX PARTE

DISPUTE:

Appeal the discipline assessed Engineers Rainford and Meyer.

BROTHERHOOD'S STATEMENT OF ISSUE:

On April 15, 2002 the grievors were assigned to train 98 operating from Niagara Falls to Toronto.

In the grievance at hand Engineer Rainford was the second engineer approaching a public crossing located at mile 26.28 Grimsby Subdivision. His mate, Engineer Meyer, was at the controls and whistled for it in accordance with CROR 14L.

Although the crew never received a formal complaint against them, they were investigated and both disciplined 15 demerit marks and required to undertake remedial rules training for improper whistling.

The Brotherhood is at a loss to understand how any discipline assessed to either engineer is justified.

Remedy sought: that the discipline issued Engineers Rainford and Meyer be stricken from their records.

FOR THE BROTHERHOOD:

(SGD.) J. R. TOFFLEMIRE
GENERAL CHAIRMAN

There appeared on behalf of the Corporation:

E. J. Houlihan	– Sr. Manager, Labour Relations, Montreal
G. Benn	– Labour Relations Officer, Montreal
J. P. Pollender	– Manager, Customer Service, Montreal
W. Buckley	– Manager, Customer Service, Toronto

And on behalf of the Brotherhood:

J. R. Tofflemire	– General Chairman, Oakville
E. MacKinnon	– Local Chairman, Montreal
G. MacDonald	– Local Chairman, Montreal

AWARD OF THE ARBITRATOR

The material in the case at hand confirms that as the train operated by Locomotive Engineer Meyer approached the public crossing at mile 26.28 of the Grimsby Subdivision it did apply the requisite whistle in accordance with CROR 14(L). On that occasion, as a result of an earlier fatality at that crossing, a party of individuals, including a railway safety inspector of Transport Canada were visiting the site. The inspector, Mr. B.L. Abbott, wrote a note of non-compliance to the Superintendent of the South West Zone for CN indicating that in his view there had been non-compliance with the rule. The Arbitrator is satisfied that the note of non-compliance is not a “complaint” within the meaning of article 71.11 of the collective agreement, and that there was therefore no requirement of written notification.

A subsequent investigation, including a download of the locomotive’s computerized records, indicated that the train did apply its whistle in accordance with the requirements of rule 14(L), that is two long blasts, one short blast, and one additional long blast. However, the first and second long whistles, separated by a four second delay, were each nine-tenths of a second long. After a further five second delay

a short whistle of two-tenths of a second was sounded followed, after a two second delay, by a additional long whistle of only nine-tenths of a second.

Was there a violation of the rule in the case at hand? Rule 14(ii) reads as follows:

> Engine whistle signals must be sounded as prescribed by this rule, and should be distinct, within intensity and duration proportionate to the distance the signal is to be conveyed. Unnecessary use of the whistle is prohibited.

It is common ground that the application of the whistle and the length of the blasts may depend on the speed at which a train is approaching a crossing and the corresponding time required to travel the distance between the whistle post and the crossing itself.

The railway safety inspector's letter to CN gives no specifics as to the failure which he alleges took place. However, there is material within the record of the investigation which reveals what the Arbitrator takes to be the fundamental concern of the Corporation. One of the questions put the grievors confirms that as their train proceeded over the quarter mile distance between the whistle post and the crossing, at a speed of sixty-four miles per hour, the whistle sounded for a total of 20.3% of the time. The employer's position is that the length of time the whistle actually sounded was insufficient in the circumstances.

In the Arbitrator's view the employer's concern is understandable. In such a circumstance the preference would obviously be for the sounding of whistle blasts which occupy a substantial portion of the time the train travels the quarter mile distance approaching a public crossing. By the same token, there is necessarily a degree of judgement which must be applied by the locomotive engineer operating the train at the time. In the result, while some form of discipline may be indicated, care must be taken as to the appropriate measure of sanction in the circumstances.

The grievors are long service employees, with Mr. Meyer having twenty-one years of service and no discipline or complaints on his record. Mr. Rainford, who had twenty-five years of service, had twenty demerits outstanding at the time of the incident. While Mr. Rainford was not in control of the whistle approaching the crossing, he is nevertheless equally responsible for the safe operation of his train.

In all of the circumstances the Arbitrator is satisfied that it was appropriate for the Corporation to bring to the attention of the grievors the fact that they should have sounded their whistle for longer periods as they approached the crossing. I am not of the view, however, that the assessment of demerits was appropriate. In my view the recording of a written reprimand would have been sufficient to provide the rehabilitative direction appropriate in the circumstances.

The grievance is therefore allowed, in part. The Arbitrator directs that the fifteen demerits assessed against the grievors be stricken from their records and that a written reprimand be substituted.

February 19, 2004

(signed) MICHEL G. PICHER
ARBITRATOR