CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3428

Heard in Montreal, Thursday, 13 May 2004

concerning

VIA RAIL CANADA INC.

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

Violation of article 51 of agreement 1.4

UNION'S STATEMENT OF ISSUE:

On several occasions Toronto crews assigned to long turnaround assignments (500-600 miles / 16-18 hour days) have booked rest at the away from home terminal when operating in excess of 2 hours late.

The on duty crew controllers have advised them that they are "on their own". The characterization of "on your own" has been defined as refusing to offer a hotel room at the regular rest facility, no alternative transportation home, no ordering time at the expiration of personal rest and refusing to provide direction. The Brotherhood has been advised by the Crew Management Centre that controllers were following an internal VIA memo.

Recently hotel rooms have been provided yet the Corporation insists that the crew is on their own and endures a penalty.

Remedy sought: that the Corporation be found in violation of article 51. In addition, an order to facilitate payment of legitimate claims outstanding as a result.

FOR THE UNION:

(SGD.) J. R. TOFFLEMIRE
GENERAL CHAIRMAN

There appeared on behalf of the Corporation:

E. J. Houlihan	– Senior Manger, Labour Relations, Montreal
B. E. Woods	– Director, Labour Relations, Montreal
G. Benn	– Officer, Labour Relations, Montreal
G. Selesnic	– Manager, Customer Services

J. P. Pollender – Manager, Customer Services

And on behalf of the Union:
J. R. Tofflemire – General Chairman, Oakville
S. Thérrien – Secretary,
M. Grieve – Local Chairman, Div'n. 747

AWARD OF THE ARBITRATOR

Upon a review of the material the Arbitrator cannot find any provisions in the collective agreement which would support the claim of the Union.

The facts are not in dispute. The employees cited in an example were assigned to train no. 42 operating from Toronto to Ottawa, and were scheduled to return the same day operating train no. 49 in the reverse direction. Because of a fatality in GO Train operations on the Kingston Subdivision they were substantially delayed, arriving in Ottawa just under three hours late at 17:03, only minutes before the 17:05 scheduled departure of train no. 49 back to Toronto. In that circumstance the employees, Locomotive Engineers Filman and Mitchell, gave advance notice to the Corporation of their intention to book rest at Ottawa, which they duly did. That gave the Corporation the opportunity to call a relief Ottawa crew to handle train 49. In the result the employees went off duty at 17:35 and stayed overnight in Ottawa, being provided accommodation by the Corporation. They returned to Toronto the next day on train no. 41 as passengers. Upon their arrival at Toronto at 10:20 they booked six hours rest, which overlapped their next assignment, which would have been to operate train no. 48 between Toronto and Ottawa with an on duty time of 15:30.

The Union objects to the reduction of the grievors' guarantees which was implemented by the Corporation and claims, in the alternative, that they should have been ordered deadheaded by the Corporation and paid for the return leg of their journey, whether on train 49 or on train 41.

In support of its claim the Union draws to the Arbitrator's attention article 15.5 of the collective agreement which reads as follows:

> **15.5** Locomotive Engineers who book rest at an away from home terminal will have their guarantees reduced by all hours of the tour of duty missed, unless the train was delayed by two or more hours which results in the regular layover now being less than six hours.

The Arbitrator must agree with the Corporation that the above provision cannot apply in the circumstances, as the regular layover which the grievors were to have in Ottawa was, in any event, less than six hours. In other words, their layover was not reduced below six hours by reason of the delay of their train, albeit their layover was admittedly shortened almost to the vanishing point.

The Corporation's representative stresses that the collective agreement contains no language which would have compelled the Corporation to order the grievors to return to Toronto in deadhead service, nor is there any provision which would protect them from the reduction of their guarantee in the circumstances disclosed. He stresses that the situation is one consciously accepted by the Union, which opted for the establishment of certain long runs, like the Toronto – Ottawa run, in exchange for a

work cycle that would give employees an attractive structure of days off. He argues that what the Union now requests would be tantamount to an amendment of the collective agreement. With that the Arbitrator cannot disagree, as I must obviously take the collective agreement as I find it, and there are no provisions which would support the claim now made by the Union.

The foregoing conclusion does not obviate what the Arbitrator views as the need for the parties to come to grips with the problem raised in this grievance. It would appear that the circumstance of the instant case is relatively rare, occurring perhaps no more than a half dozen times over the course of a year. There may well be a formula which the parties can fashion to provide relief in exceptional circumstances. I must agree with the representative of the Corporation, however, that that is a matter for bargaining and not for arbitration.

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

May 17, 2004

(signed) MICHEL G. PICHER
ARBITRATOR