CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3393

Heard in Montreal, Tuesday, 13 January 2004

concerning

VIA RAIL CANADA INC.

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS
EX PARTE

DISPUTE:

Payment for lifting and setting out of locomotives.

BROTHERHOOD'S STATEMENT OF ISSUE:

Locomotive engineers in road service are required at certain locations and/or under different circumstances to lift or set off locomotives involving their locomotive consist as directed.

This collective agreement work rule and the terms of payment are provided for in the collective agreement.

Time claims have been submitted at locations where no shop staff is available for payment under the provisions of article 10.1 and 10.4 of agreement 1.4.

The Corporation has refused to honour the claims as submitted.

Remedy sought: that the Corporation be directed to honour the time claims.

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 facts in relation to this grievance are not in dispute. Trains no. 40 (Ottawa) and no. 52 (Montreal) operate from the Toronto Maintenance Centre (TMC) westward to Aldershot and then eastward to Toronto Union Station as a combined consist. The locomotive for train no. 52 is at the eastward extremity of the consist while the locomotive for train no. 40 is in the middle of the consist. A third locomotive is at the westward extremity of the consist to allow it to be pulled to Aldershot. Between the TMC and Toronto Union Station the consist is handled by the locomotive engineers of train no. 40 who go on duty at the TMC. Upon arrival at Union Station, the location where the locomotive engineers of train no. 52 go on duty, the combined consist is effectively taken over by the operating crew of train no. 52. They uncouple the locomotive at the rear of the consist and operate the combined trains from Toronto Union Station to Brockville. At Brockville the two trains are separated, with train no. 52 proceeding onwards to Montreal and train no. 40 going to Ottawa. The locomotive engineers for train no. 40 do not operate between Toronto Union Station and Brockville, and generally ride either in their locomotive or within the body of the train.

The instant grievance arises by reason of a claim made by the locomotive engineers for train no. 52 for setting out the third locomotive at Toronto Union Station. The claim is under the terms of article 10.1 of the collective agreement which provides as follows:

> **10.1** Locomotive engineers called for road service who are required to set out or pick up a diesel unit (or units) involving their locomotive consist will be paid an allowance of:
>
> Effective Jan 1/2000 $6.82

The Arbitrator accepts the fundamental interpretation of article 10.1 put forward by the Corporation. Its representative notes that under the previous collective agreement, when locomotive engineers were compensated on a mileage basis, switching at initial and final terminals was specifically provided for and paid on a minute basis. There was, under that arrangement, no double payment for the setting out or picking up of a diesel unit relating to their own train at the initial for final terminal. The pre-cursor of article 10.1 of collective agreement 1.4 was article 19.1 of collective agreement 1.1. Its application, it does not appear disputed, was restricted to payment for the setting out and picking up of diesel units enroute.

Can it be said that in the circumstances of the instant case the locomotive engineers of train no. 52 were required to set out a diesel unit enroute? It would appear to the Arbitrator that the locomotive engineers of train no. 40 might have such a claim if the task of setting out the locomotive at Union Station had been assigned to them. Their assignment, being from Aldershot to Ottawa, would arguably have involved the setting out of a locomotive unit enroute, at Toronto Union Station. In my view, however, the same cannot be said of the locomotive engineers of train no. 52, on whose behalf this claim is made. It is common ground that they went on duty at Union Station. In that circumstance the work which they performed in setting out the locomotive at Union

Station must be viewed as work in relation to their own train at the initial terminal. In that circumstance it is not, in the Arbitrator's view, work of the type contemplated by article 10.1 of the collective agreement. Additionally, although the Corporation did not argue the point, it would be appear doubtful to the Arbitrator that it could be said that the removal of the third locomotive can accurately be described as a diesel unit "involving their locomotive consist". As that matter was not fully argued, it need not be considered further.

The Arbitrator must also agree with the Corporation that if the grievance should be allowed for the locomotive engineers of train no. 52 the result would be a form of double payment for the same work, as they would have the benefit of the provision governing initial terminal time as well as the additional payment provided under article 10.1. In the Arbitrator's view it would require clear and unequivocal language within the terms of the collective agreement to conclude that the parties intended such a result.

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

February 19, 2004

(signed) MICHEL G. PICHER
ARBITRATOR