CANADIAN RAILWAY OFFICE OF ARBITRATION

& DISPUTE RESOLUTION

CASE NO. 4283

Heard in Montreal, February 11, 2014

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Payment of twenty-five (25) minute travel allowance for CN engineers deadheading to or from the terminal of Belleville by passenger train and the alleged discontinuance of such payment.

JOINT STATEMENT OF ISSUE:

On May 23, 2013, Mr. David Ogden, a CN locomotive engineer stationed at Belleville Ontario was ordered to deadhead by passenger train from Belleville to Montreal. He was ordered to deadhead on VIA train 60, which has an advertised departure time from Belleville of 13:28. Mr. Ogden was ordered by the CMC to report for duty at 12:45, some forty three (43) minutes prior to the departure time. He reported for duty as ordered, and was transported by taxi from the Belleville CN yard office to the VIA station. A claim for twenty five (25) minutes travel allowance was declined by the Company.

The Company declined the time claim of 25 minutes and the parties remain in dispute on the matter. The parties are now properly before the Arbitrator in the resolution of the issues.

FOR THE UNION:	**FOR THE COMPANY:**
(SGD.) R. Caldwell	**(SGD.) M. Marshall**
General Chairman	**Senior Manager Labour Relations**

There appeared on behalf of the Company:

M. Marshall	– Senior Labour Relations Manager, Toronto
D. Larouche	– Labour Relations Manager, Montreal
D. Gagne	– Senior Labour Relations Manager, Montreal
V. Paquet	– Labour Relations Manager, Toronto

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
R. Caldwell	– General Chairman, Bancroft
P. Boucher	– Vice General Chairman, Belleville
M. Byrnes	– Local Chairman, Capreol

AWARD OF THE ARBITRATOR

The union claims entitlement to a twenty-five minute travel allowance for locomotive engineers who are required to deadhead to or from the terminal of Belleville. The payment in question relates to the time to travel by taxi from the CN yard office in Belleville to the Via station, or vice versa.

The Union relies, in part, on an arrangement made in March of 2008 between Union Representative Randy Caldwell and Company Officer Barry Hogan. Their agreement is reflected in an email dated March 3, 2008 sent to the Company by Mr. Caldwell. Apparently based on notes taken by Mr. Hogan, the agreement is described as follows:

> It has been agreed that for the purposes of ordering crews to deadhead by Via trains in Belleville that the following apply:
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> 1. The Ordering time for the Via Train will be considered to be 25 minutes ahead of the scheduled departure time of the Via Train at the Belleville Station.
> 2. Such ordering time must fall within the operating time pool of the Locomotive Engineer called.

The Union submits that the practice following that agreement effectively confirmed the payment of a twenty-five minute travel allowance for travel between the CN yard and the Via station at Belleville.

With respect, the Arbitrator has some difficulty with the Union's submission. Firstly, as reflected in data filed in evidence by the Company, there has not been a

consistent practice of paying the twenty-five minute travel allowance over the years between 2008 and 2013. In fact, in a majority of those years that travel allowance was paid less than fifty percent of the time. The Union suggests that the Company's data is flawed in that it reflects the payment of the travel allowance which, according to the Union, was made only when the allowance was claimed. In the Union's submission in every instance when the allowance was claimed it was paid.

Upon a review of the data, I am compelled to agree with the Company that at best what the record discloses is a mixed practice over the years. It appears that only in 2011 and 2012 were a majority of travel allowances paid. In other years, including 2008, 2009, 2010 and 2013 the majority were in fact not paid.

Nor can the Arbitrator accept that the past practice comes to bear by reason of any ambiguity in the language of the parties' agreement. Very simply, the arrangement made with Mr. Hogan in 2008 makes absolutely no reference to the payment of travel allowance. The language of that agreement confines itself to determining the ordering time for deadheading crews at the Belleville station, and allows for twenty-five minutes ahead of the train's scheduled departure. The agreement neither directly nor indirectly addresses the issue of whether travel allowance is to be paid for travel between the CN yard and the Via station.

In this, as in any claim grievance, the burden of proof is upon the Union. What the preponderance of the evidence before the Arbitrator discloses is that in fact in a

majority of years only a minority of employees claimed and received the travel allowance which is the subject of this dispute. Moreover, the Union can point to no language within the collective agreement or within the agreement reached with Mr. Hogan in 2008 to confirm the travel allowance is to be paid.

Based on the foregoing, I cannot come to the conclusion that the parties either agreed to the payment of travel allowance at Belleville for movement between the CN yard and the Via station at Belleville, nor can I find a preponderance of practice that would support the Union's interpretation in the case at hand. It is well settled that where an employer has miss-applied the collective agreement, however consistently or sporadically, absent conditions which give rise to an estoppel, it is at liberty to correct its error. In the instant case I am satisfied that estoppel does not come to bear, particularly in light of what is obviously a relatively inconsistent practice over the years. In the result, I can find no basis upon which the Union can ground its claim for the payment of travel allowance for movement between the CN yard and the Via station at Belleville.

For these reasons the grievance must be dismissed.

February 17, 2014

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MICHEL G. PICHER
ARBITRATOR