

IN THE MATTER OF AN ARBITRATION

BETWEEN:

BC RAIL

(hereinafter referred to as the "Railway")

AND:

CANADIAN UNION OF TRANSPORTATION EMPLOYEES, LOCAL #1

(hereinafter referred to as the "Union")

(R. Holland)

Dispute:

Claim on behalf of Locomotive Engineer R. Holland of Prince George, BC for "the actual hours earned on the trip November 2, 2001 or the guarantee for that week, whichever is greater".

Joint Statement of Issue:

On November 7, 2001, Locomotive Engineer Holland was in assigned coal service, with an assigned calling window of between 1900 and 0300. November 7th was an assigned working day for the grievor.

At 1733 the grievor contacted the interactive voice response system (IVR) and was advised that the projected call time for his assignment was 2130. The grievor did not speak with any employees in the Crew Office.

At 1938 the grievor contacted the Crew Office to learn the status of his call. He was advised that the call had been put out for 2100, and inasmuch as he was not available, a spare employee had been called in his place.

The Company offered to issue a "called and cancelled" to the spare employee and give the call to the grievor in order that he may follow his work assignment. The Crew Office did not offer to adjust the call time and the grievor was unable to make the 21:00 call.

The Union contends that when the grievor contacted the IVR he fulfilled his obligations as provided for in a Letter of Understanding dated December 28, 1987 which states as follows:

"An engineer in Coal Freight Service who misses a call but had checked with the Crew Office within three (3) hours prior to the call being put out will not lose his guarantee nor the hours he would have made for the complete trip. He will be paid those hours for the trip lost or the guarantee whichever is the greater."

The Union further contends that the grievor has suffered a loss of earnings as a consequence of inaccurate line-up information on the IVR, and has requested payment under the provisions of the Letter of Understanding referenced above.

The Company contends that the grievor failed to be available for his scheduled assignment as required and that contacting the IVR does not satisfy the requirements of the Letter of Understanding dated December 28, 1987.

The Company has declined payment.

FOR THE UNION:

**Robert Samson
General Chairperson
C.U.T.E. Local 1**

Arbitrator:
Counsel for the Railway:
Counsel for the Union:

Place of Hearing:
Date of Hearing:

FOR THE RAILWAY:

**D.A. Lypka
General Manager
Operations**

H. Allan Hope, Q.C.
Michael Keiran and Paul Straszak
Robert Samson and Wayne Benedict

Vancouver, B.C.
April 10, 2002

A W A R D

The issue in this dispute is whether the Grievor, having used the "interactive voice response system (IVR), was entitled to rely on the call estimate given with respect to his assignment. In particular, was he entitled to assume that the call would be for 21:30 (9.30 p.m.) without further confirming the estimate? The facts relevant to the resolution of the dispute are straightforward. The language governing the dispute appears in the December 28, 1987 Letter of Understanding. The question arising is whether an engineer is entitled, in terms of that Letter, to treat telephone calls to the Railway's IVR system as the equivalent of "[checking] with the Crew Office within three (3) hours prior to the call being put out".

As indicated in the Joint Statement of Issue, the Grievor accessed the IVR at 17:33 (5.33 p.m.) and learned that the "projected call time" for his work assignment that day was 21:30 (9.30 p.m.). In short, he checked the IVR approximately four hours prior to the call time projected for his assignment. However, he did not, "[check] with the Crew Office within three hours prior to the call being put out".

The Grievor did contact the Crew Office within the three hour window at 19:38 (7.38 p.m.). He then learned that his call time had been advanced by 30 minutes to 9 p.m. Following established procedure, the Crew Office had attempted to contact him to advise him of the change in his assignment but, on the facts developed in the hearing, he could not be contacted and a spareboard employee was called to fill his

assignment. The question arising on those facts is whether the Grievor's call to the IVR at 17:33 (5.33 p.m.) was the equivalent of "[checking] with the Crew Office within three hours prior to the 21:30 (9.30 p.m.) call being put out".

I note in that context that the fact that the Crew Office offered to make the assignment available to the Grievor when he called at 7.38 p.m. and the coincidental fact that he was unable to meet that call time, is irrelevant. The only question is whether his 17:33 (5.33 p.m.) contact with the IVR was in compliance with the December 28, 1987 Letter of Understanding. The short answer to that question is that the Grievor failed to bring himself within the terms of the Letter.

Accessing the IVR was not the equivalent of checking with the Crew Office. The factual difference is immediately apparent. Checking with the Crew Office within the three hour window affords the Railway the opportunity to refresh the factors affecting the call, including any changes in the time and, potentially, to alert engineers to possible changes that may arise and which could be communicated to them at the contact telephone numbers they have arranged. The IVR is not an equivalent resource. Even if it were, checking four hours before call time does not meet the criteria set out in the Letter.

On those facts, the failure of the Grievor to contact the Crew Office within the three hour window or to hold himself available at his contact numbers to be informed of changes takes

him outside of the scope of the guarantee in the Letter. In the result, the grievance is dismissed.

DATED at the City of Prince George, in the Province of British Columbia, this 27th day of August, 2002.

"H. Allan Hope, Q.C."

H. ALLAN HOPE, Q.C. - Arbitrator