

Grievance Arbitration

R. Holland: Guarantee Payment as per Letter of Understanding

C.U.T.E. Local 1 Submission

GP 2001-91

1. The issues before the arbitrator are:
 - Is the Interactive Voice Response (IVR) system an extension of the “Crew Office”?
 - In checking with the Crew Office IVR, did Locomotive Engineer Holland fulfill his obligations for payment under item #1 of the Coal Freight Service (Quintette and Teck Mines) Letter of Understanding (Appendix 1)?

2. On November 7th 2001, Locomotive Engineer Holland was subject to a call for his assignment in coal service from Prince George to Teck mine. From at least 15:30 on the day in question the Crew Office IVR advertised that his job was scheduled to be called for 21:30 and the parties agree that he had checked the IVR information frequently throughout the day. This fact is known because he had entered his employee number into the IVR when checking-in causing his calls to be logged in the “**Phone Log**”.

3. Item #1 of the Coal Freight Service (Quintette and Teck Mines) Letter of Understanding reads 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 greater. (Emphasis added)

4. Given the information that Mr. Holland was given by the Crew Office IVR, he expected his two hour call in accordance with Article 10.1 at 19:30 for 21:30. The actual call that Mr. Holland missed was put out at 19:00 for 21:00. Therefore, 16:00 equates to “**three (3) hours prior to the call being put out**” as per the applicable letter of understanding. In the company’s step II response, General Manager Operations Lypka states that “at 17:33 Mr. Holland contacted the IVR and was informed that his call, at that time was scheduled for 21:30”. The company and the union are in agreement that Mr. Holland “**had checked with the Crew Office [IVR] within three (3) hours prior to the call being put out**”.
5. The Crew Office, after advertising a 21:30 start time all day, moved the start time of Mr. Holland’s job to 21:00. Mr. Holland, who was protecting a 21:30 start time

missed the call for 21:00 but called the crew office at 19:38 to accept his call for 21:30. At that time he was informed that a spare locomotive engineer had been called but could be cancelled if Mr. Holland could make the 21:00 start time. Mr. Holland was in Vanderhoof at the time and could not make 21:00 in Prince George and the Crew Office did not offer to recall the train for 21:30 as was originally advertised to allow him time to get to work.

6. Thus far it is clear that Mr. Holland was **“an engineer in Coal Freight Service who misse[d] a call”** and that he **“had checked with the Crew Office [IVR] within three (3) hours prior to the call being put out”**. These are facts, undisputed by either side. The company has based its denial of payment on its assertion that the “IVR” is not equivalent to the “Crew Office”. The union submits that the IVR has been used by BC Rail for crew monitoring and has been introduced by the company as evidence in numerous incidents and hearings. The company relies on the system to its advantage but dismisses it as merely a “general estimate of train operations” in the instant case.

7. As evidence that the IVR has been relied upon by the railway as well as the union since its introduction, the union directs the arbitrator to BC Rail’s Special Instructions to crew administration (Appendix 2). It reads in part that **“a Lillooet spareboard employee is not responsible to the IVR for spare work at**

Williams Lake". Further, The BC Rail Crew Supervisor's Manual (Appendix 3) provides the following:

Phone Log:

This is used to check when an employee last accessed the IVR system, particularly if a runaround claim has been submitted.

These written instructions indicate that the Company is fully aware that the IVR is and has been utilized as an extension of the Crew Office—both by itself and by unionized employees.

8. Item #5 of the Tumbler Coal Freight Service section of the BC Rail Crew Office Manual (Appendix 4) shows clearly that the Company is fully cognizant of what should occur under circumstances outlines in the instant case. It reads:

5. An employee in coal service who misses a call but had checked with the Crew Office within three (3) hours prior to the call being but (put) out will not lose his guarantee or the hours his crew would have made for the complete trip. He will be paid those hours his crew made for the trip or the guarantee whichever is greater.

9. In the company's step 1 response, Superintendent Train and Terminal Operation Rebagliati stated that "The coal operation has changed considerably since 1987, and in today's world, the coal trains are operated as assignments". This would indicate that the company is unhappy with the Coal Freight Service (Quintette

and Teck Mines) Letter of Understanding as it is written. Its options are to live with the letter, renegotiate the letter, or issue 30 days written notice of cancellation; however, the fact that it no longer likes the terms of the letter is not justification to ignore its contents.

10. The union submits that Locomotive Engineer Holland clearly met all of the requirements of the Coal Freight Service (Quintette and Teck Mines) Letter of Understanding and that he is entitled to be paid in accordance with it.

11. The union asks that the arbitrator find the following:

- ✓ That Mr. Holland lived up to his responsibilities in regards to the Coal Freight Service (Quintette and Teck Mines) Letter of Understanding.

12. In the matter of rectification, the union asks that the arbitrator find that BC Rail must:

- ✓ Settle GP 2001-91 in accordance with the union's interpretation of the Coal Freight Service (Quintette and Teck Mines) Letter of Understanding dated December 28th, 1987 and that it pay Mr. Holland **“those hours his crew made for the trip or the guarantee whichever is greater”**.

13. The union respectfully submits the foregoing to the arbitrator.