

IN THE MATTER OF AN ARBITRATION

BETWEEN

CANADIAN PACIFIC RAILWAY

(the “Company”)

and

TEAMSTERS CANADA RAIL CONFERENCE

(the “Union”)

**GRIEVANCES CONCERNING THE EDMONTON TERMINAL AND
EMPLOYEES REPORTING TO CLOVER BAR YARD, SCOTFORD YARD AND
THE ELLERSLIE COMPOUND**

SOLE ARBITRATOR: John Stout

APPEARANCES:

For the Company:

Chris Clark – Assistant Director Labour Relations

David Pezzaniti – Labour Relations Officer

For the Union:

Denis Ellickson- Caley Wray

Dave Fulton - General Chair, TCRC-CTY West

Greg Edwards - General Chair TCRC –LE West

Doug Edward - Senior Vice General Chair, TCRC-CTY West

Wayne McCotter- Local Chairman – CTY Edmonton AB

HEARING HELD IN CALGARY, ALBERTA ON FEBRUARY 28, 2017

AWARD

I. INTRODUCTION

[1] I was appointed by the Canadian Pacific Railway Company (the “Company” also referred to as “CP”) and the Teamsters Canada Rail Conference (the “Union” also referred to as “TCRC”) to hear and resolve a number of outstanding grievances pursuant to a Memorandum of Agreement (MOA) dated April 12, 2016.

[2] The MOA provides that the grievances will be heard on an expedited basis and presented in accordance with the Canadian Railway Office of Arbitration & Dispute Resolution (CROA & DR) rules and style.

[3] This award addresses three group grievances filed by the Union’s two western General Committees of Adjustment (“GCAs”). The two western GCAs represent the Union’s running trade members employed by the Company throughout the region known as Western Canada (Thunder Bay west to British Columbia).

[4] There are two collective agreements relevant to this matter (the “Collective Agreements”). One collective agreement applies to the Company’s western employees represented by the TCRC and classified as Conductor, Assistant Conductor, Bagperson, Brakeperson, Car Retarder Operator, Yard Foreman, Yard Helper and Switchtender (CTY-West). The other collective agreement applies to the Company’s western employees represented by the TCRC and classified as Locomotive Engineers (LE-West).

II. THE CURRENT DISPUTE

[5] The current dispute arises from the Company’s decision to cancel local agreements, which provided travel allowances to employees reporting for duty in the Edmonton area (the “Edmonton local agreements”). At the same time the

Company assigned certain employees to commence and conclude their work assignments at Scotford Yard, Clover Bar Yard and the Ellerslie Compound, without any additional compensation.

[6] The parties were unable to agree upon a Joint Statement of Issue. Instead, they each filed their own Ex Parte Statement of Issue.

[7] The Union's Ex Parte Statement of Issue provides as follows:

DISPUTE:

Group grievance regarding the Company's actions of requiring Edmonton based employees to report to Clover Bar, Scotford and Ellerslie.

STATEMENT OF ISSUE:

In July 9, 2013 the Company issued a letter to the Union regarding the cancellation of various local agreements pertaining to negotiated travel allowances, which provided for employees to report for duty at locations other than the established home terminal of South Edmonton.

Beginning July 22, 2013 the Company discontinued the aforementioned travel allowances, yet continued to require employees report for duty at Clover Bar and Scotford yards.

Effective February 23, 2014, the Company established new assignments which required employees to directly report to Ellerslie Compound in addition to Clover Bar and Scotford Yard.

THE UNION'S POSITION

The Union contends that the pre-existing travel allowances were mutually negotiated in order to facilitate employees to report at industry locations other than the established South Edmonton home terminal. By cancelling these travel allowances, the Company is required to revert back to the previous reporting location of South Edmonton. Additionally, the Company cannot change an established home terminal under the terms of the Collective Agreement without mutual agreement.

The Union submits that by unilaterally instructing employees to directly report to various locations within or outside the Edmonton Terminal the Company is in violation of Articles 1, 20, 24, 27, 29, 33 as modified in the 2007 MOS, 50, 59, 72, 79 and the Letter RE: Employees assigned or forced to outpost terminals of the CTY Collective Agreement, Articles 1, 8, 21, 25 as modified in the 2007 MOS, 27, 30, 35, 72, and the Letter RE: Employees assigned or forced to outpost terminals of the LE Collective Agreement as well as present regulation stipulated under the RAC Work Rest Rules.

With respect to the yard assignments required to directly report to Scotford, the Union contends this is a material change in working conditions for all

yard employees affected by the change. All adverse effects must be recognised within the material change as defined in Articles 72(CTY) and 34(LE). As such, the Union seeks a finding that the Company is required to initiate negotiations to properly minimize adverse effects as a result of the proposed change, prior to implementation.

The ongoing action of requiring Edmonton crews to report at locations other than the established home terminal of South Edmonton has caused undue hardship to its employees. The Union has filed a series of individual grievances outlining this position and claiming compensation on behalf of its members for their losses associated with the above breaches.

The Union seeks a finding that the Company has violated the Collective Agreements as indicated above and an order that the Company cease and desist its ongoing breaches of the Collective Agreement.

The Union is seeking an order that the Company pay all outstanding claims for our grievances and recognition that these claims are justified under the terms of the Collective Agreements. The Union is also seeking any further relief the Arbitrator deems necessary in order to ensure future compliance with the Articles in question.

COMPANY POSITION

The Company disagrees and denies the Union's request.

[8] The Company disagrees and denies the Union's allegations. The Company's Ex Parte Statement of Issue provides as follows:

DISPUTE:

Grievance regarding the Company's actions of requiring Edmonton based employees to report to Clover Bar, Scotford and Ellerslie Compound.

STATEMENT OF ISSUE:

On July 9, 2013 the Company issued a letter to the Union regarding the cancellation of local agreements which provided travel allowances for employees who report for duty at Scotford and Clover Bar Yard locations.

Beginning July 22, 2013 the Company discontinued travel allowances associated with local agreements for employees who were required to report for duty at Clover Bar and Scotford yards.

The Union contends that the pre-existing travel allowances were mutually negotiated in order to facilitate employees to report at industry locations other than the established South Edmonton, home terminal. The Union also contends by cancelling these travel allowances, the Company is required to revert back to the previous reporting location of South Edmonton.

The Union claims compensation on behalf of its members for their losses associated with this change.

The Company disagrees and denies the Union's allegation.

III. BACKGROUND FACTS

The Edmonton Terminal

[9] As indicated at the outset, this matter concerns a number of Company initiatives relating to how it conducts business in the Edmonton area. This is not the first time I have been called upon by these parties to address an issue involving Company initiatives in the Edmonton area.

[10] In *Canadian Pacific Railway and Teamsters Canada Rail Conference (Red Deer Interim Diversion Agreement)*, 2017 CanLII 5244 (ONLA), one of the issues I was called upon to address was whether or not Scotford Yard fell within the boundaries of the Edmonton Terminal. I ultimately found that Scotford Yard did not fall within the Edmonton Terminal's boundaries. The relevant portion of the award is set out below:

[15] A "terminal" is formed at the convergence of subdivisions. In **CROA 479**, Arbitrator Weatherill indicated that the meaning of "terminal" was not clearly defined in the collective agreements, at least not for the purpose of determining the area within which initial and final terminal switching may be performed. Arbitrator Weatherill went on to find that the "yard switching limits would appear to be the appropriate limits for such work."

[16] The terminal limits act as a "neutral zone", where individual subdivisions exist within the boundaries of the terminal. In **CROA 194**, Arbitrator Weatherill noted that "work within the terminal cannot properly be said to be on another subdivision."

[17] South Edmonton (formerly Strathcona) was established as a "Home Terminal" by a Company Bulletin dated March 30, 1931. This was confirmed in a letter to the Union dated August 25, 1939. Subsequent correspondence between the Company and the Union between February 11, 1966 and April 18, 1967 lists South Edmonton as a Home Terminal and an "Away From Home Terminal" for Red Deer.

[18] The collective agreements also clearly designate South Edmonton as a Home Terminal. As pointed out by the Company, the parties have used the terms South Edmonton and Edmonton interchangeably. There is no dispute that South Edmonton Yard is within the Edmonton Terminal. There is a dispute with respect to the current limits of the Edmonton Terminal.

[19] The Company submits that the Edmonton Terminal is not limited to the South Edmonton Yard. It is the Company's position that the limits of the Edmonton Terminal includes Scotford Yard, which is approximately 30 miles northeast of the South Edmonton Yard.

[20] The Union disagrees and submits that the established eastern switching limit of the Edmonton Terminal is mile 159.8. The Union takes the position that South Edmonton Yard is the final terminal and Scotford Yard is outside the Edmonton Terminal.

...

[27] I prefer the evidence provided by the Union, which specifically addresses the issue of the eastern switching limits of the Edmonton Terminal. These documents illustrate a specific agreement, which I view is more compelling than the more general documents provided by the Company. Furthermore, a specific agreement between the parties is consistent with the terms of the collective agreements. Accordingly, I find that the Edmonton Terminal's eastern limit is mile 159.8 and does not include Scotford Yard.

[11] In these proceedings, the Company does not challenge my earlier finding that Scotford Yard does not fall within the Edmonton Terminal's boundaries. The parties agree that Scotford Yard is an "outpost terminal".

[12] The Ellerslie Compound is located just south of the Edmonton Terminal on the Leduc Subdivision. The parties agree that Ellerslie Compound is also an outpost terminal.

[13] The South Edmonton Yard is clearly within the Edmonton Terminal boundaries. "South Edmonton" is also referenced as a home terminal in the Collective Agreements. However, it is significant that the parties have referred to South Edmonton and Edmonton interchangeably in the Collective Agreements and in other agreements between the parties.¹

[14] There is no dispute that in addition to the South Edmonton Yard, the Edmonton Terminal includes other yards such as Lambton Park and notably Clover Bar Yard.²

¹ See for example articles 1 of both CTY-West and LE-West addressing fixed mileage and articles 33.01(7), 41.02, 43.07 CTY-West as well as Bulletin #132 dated June 23, 1964 and the Edmonton local agreements.

² See the Edmonton Best Practices Guide, Edmonton Terminal Reference Map.

[15] In and around 2012-2013 the Company reviewed their operations in the Edmonton area. As a result of the review, the Company made a number of changes, including a decision to enter into a joint venture to develop the South Edmonton Yard.³ Subsequently, the South Edmonton Yard has been significantly redeveloped into condominiums and the majority of the rail yard no longer exists.

Letters in the CTY-West Collective Agreement

[16] There is a letter dated August 26, 1982 (Letter Re: Employees assigned or forced to outpost terminals) contained in the CTY-West Collective Agreement. The letter provides that employees assigned or forced to outpost terminals will be provided with meals and lodging expenses, or the Company may elect to provide transportation or an allowance in lieu thereof. The letter specifically acknowledges that these arrangements for outpost terminals will be addressed on a local basis.

[17] The CTY-West Collective Agreement also contains a letter dated April 18, 1988 (Letter Re: Use of Personal Vehicle), which provides that employees may be permitted to use their personal vehicles, in certain circumstances, as transportation to and from outpost terminals.

The Edmonton local agreements

[18] The Union and the Company are party to a number of local agreements that govern the specific working conditions at a particular terminal.⁴ These local agreements are best described by the former Chairperson of the CIRB in a decision between these two parties, 2012 CIRB 669 (Can LII) at paragraph 20:

The written local agreements between CP Rail and the TCRC govern the working conditions, rights and privileges of the bargaining unit members in the particular

³ See news release dated January 20, 2015 announcing joint venture between CP and DREAM unlimited Corp.

⁴ The Collective Agreements contemplate the arrangement of rules necessary to meet local conditions, see article 79 CTY-West and 35 LE-West.

terminal to which they apply. These agreements make it possible for the local union representatives to advise union members as to how the collective agreement will be interpreted and applied in their terminal. It also permits the local union representatives to determine, with some degree of confidence, whether there are grounds for a grievance at the local level over a particular employer action. In this regard, the written local agreements are an important aspect of the union-management relationship, as they contribute to the effective administration of the trade union and its representation of employees in the bargaining unit.

[19] On June 26, 2006 the parties entered into a local agreement for crews commencing and concluding their work assignments at Clover Bar Yard. This June 26, 2006 local agreement established Clover Bar Yard as a regular reporting location for employees who formerly reported to South Edmonton Yard. These crews received additional compensation of 60 minutes above their regular pay to compensate for travel time. This local agreement contained a seven day cancellation clause.

[20] On the same date (June 26, 2006), the parties entered into a second local agreement with respect to Edmonton Road Switchers. This letter established a number of road switcher assignments that operated out of Edmonton on the Leduc Subdivision, Breton, Scotford and Willingdon Subdivisions. This local agreement contained a thirty day cancellation clause.

[21] On September 18, 2008, the parties entered into a local agreement with respect to employees who were required to commence and conclude their work assignment at Scotford Yard. This local agreement provided for crews to report for duty at Scotford Yard in road switcher service. Crews received a non-chargeable allowance of one hour and fifteen minutes for each direction of travel to and from Scotford Yard. This local agreement contained a seven day cancellation clause.

The events giving rise to the grievances

[22] On July 9, 2013, the Company provided the Union with notice that they were cancelling the Edmonton local agreements that provided travel allowances for employees who reported to Clover Bar and Scotford yards.

[23] Beginning on July 22, 2013 the Company discontinued paying all travel claims for employees who reported to Clover Bar Yard and Scotford Yard. This action was confirmed in an August 1, 2013 Information Bulletin C-179-13.

[24] Effective February 23, 2014 the Company created new assignments requiring employees to report directly to Ellerslie Compound. This was in addition to the ongoing assignment of employees reporting to Scotford Yard and Clover Bar Yard without additional compensation.⁵

The grievances

[25] The Union filed a grievance on September 18, 2013, concerning the cancellation of the Edmonton local agreements.

[26] The Company denied the grievance, taking the position that they were entitled to cancel the Edmonton local agreements.

[27] The Union filed a second grievance on November 16, 2013, alleging that Company violated the Collective Agreements by requiring unassigned crews to report to Scotford Yard, Clover Bar Yard and Ellerslie Compound. In this grievance, the Union also asserted that the Company's conduct engaged the Material Change provisions of the Collective Agreements.

[28] The Company responded to the grievance on January 9, 2014 taking the position that the assignments were within the Edmonton Terminal limits. As

⁵ See Bulletin CMC-011-14 dated February 17, 2014.

indicated earlier, the Company has now conceded that both Scotford Yard and the Ellerslie Compound are located outside the Edmonton Terminal.

[29] The Union filed a third grievance on March 20, 2014 alleging that the Company violated the Collective Agreements by establishing an outpost at the Ellerslie Compound. The Union also asserted that this conduct engaged the material change provisions of the Collective Agreements.

[30] The Company denied this grievance as well.

IV. DECISION

[31] I begin by noting that there is no dispute that the Company was entitled to cancel the Edmonton local agreements pursuant to the cancellation clauses contained in each agreement. The parties' dispute relates to the consequences that flow from the Company's decision to cancel the Edmonton local agreements, while still requiring employees to commence and conclude their assignments at Scotford Yard, Clover Bar Yard and Ellerslie Compound.

[32] The Union asserts that in terms of assigned employees, they cannot be assigned to any location other than the South Edmonton Yard, unless there is a negotiated agreement between the parties. In this regard, the Union relies on various provisions of the Collective Agreements and the August 26, 1982 Letter Re: Employees assigned or forced to outpost terminals.

[33] In terms of unassigned employees, the Union argues that they cannot be required to report to any location other than the South Edmonton Yard. The Union asserts that the Collective Agreements are clear in this regard, relying on various articles in the Collective Agreement, but most predominately upon article 42.01 CTY-West, which provides as follows:

Home terminals for unassigned crews as at present established will not be changed except by mutual arrangements.

[34] I disagree with respect to the Union's assertion that assigned and unassigned employees cannot be required to report to any location other than the South Edmonton Yard. In my view, the Company can require both assigned and unassigned employees to report to other locations within the Edmonton Terminal.

[35] I agree with the Company that the reference to South Edmonton in the Collective Agreements as a home terminal is not determinative. As indicated earlier, the parties use the terms South Edmonton and Edmonton interchangeably in the Collective Agreements.⁶

[36] Notably, the parties did not specify South Edmonton "Yard" as a home terminal. In addition, the Collective Agreements contain language that contemplates multiple yards within a terminal.⁷ In my view, the language in the Collective Agreements does not clearly define South Edmonton Yard as a home terminal.

[37] The evidence also indicates that as far back as the June 23, 1964 Bulletin #164, the parties have referred to South Edmonton and the Edmonton Terminal interchangeably.⁸ There is no dispute that the Edmonton Terminal, as defined since 1964, is not limited to South Edmonton Yard. Rather, the Edmonton Terminal includes both Lambton Park and Clover Bar yards.

[38] Reading the Collective Agreements, as a whole and in context, it is my view that Lambton Park and Clover Bar yards together with South Edmonton Yard are included in the Edmonton home terminal.

⁶ See for example articles 33.01(7), 41.02 and 43.07 of the CTY-West Collective Agreement

⁷ See for example articles 10.02(4) and 47.12 CTY-West and amendments to article 33 CTY-West and 16 LE-West found in the December 5, 2007 Memorandum of Settlement.

⁸ The June 23, 1964 Bulletin #164 describes the switching limits of the Edmonton Terminal.

[39] It follows, that the Company has not changed or established a new home terminal by requiring assigned and unassigned crews to commence and conclude their work assignments at yards located within the Edmonton Terminal (Clover Bar and Lambton Park). There has been no change to any home terminal for employees assigned to Lambton Park or Clover Bar yards. For these employees, Edmonton remains their home terminal. Accordingly, I find that the Company did not violate article 42.01 by changing home terminals.

[40] I acknowledge the Union's argument relating to language in the Collective Agreements addressing the Company's obligation to supply an individual locker at a home terminal. However, this dispute is not about the location of lockers. Rather, this dispute concerns whether the Company can require employees to commence and conclude their work assignments at locations other than the South Edmonton Yard. It may well be that the Company has not complied with their obligation to supply a locker, but that is not an issue raised in the grievances before me. In my view, the obligation to supply a locker does not encumber the Company's right to require employees to commence and conclude work from any of the yards within the Edmonton Terminal.

[41] While I have found that the Company may assign employees to commence and conclude their work from any yard within the Edmonton Terminal, I also note that the Company must comply with any obligations under the Collective Agreements that may follow as a result of assigning employees to these yards.

[42] Turning to the Scotford Yard and Ellerslie Compound locations, I note that it is agreed that both of these locations are outpost terminals located beyond the Edmonton Terminal boundaries. In my view it naturally follows that the two letters found in the CTY-West Collective Agreement clearly apply to the employees assigned to work at these two outpost terminals. Furthermore, it also

follows that provisions relating to payment for deadheading to and from an outpost terminal apply to these two outpost locations, see for example *Canadian Pacific Railway and Teamsters Canada Rail Conference (Delson)*, 2017 CanLII 5249 (Stout).

[43] The Union raises an alternative argument that the Company ought to have issued a material change notice in this matter. The Company disagrees.

[44] I canvassed this very same issue in *Canadian Pacific Railway and Teamsters Canada Rail Conference (Red Deer Interim Diversion Agreement)*, *supra*. After reviewing the provisions in the Collective Agreements and relevant arbitration awards, I concluded that the Union had not met the onus of establishing that the Company's action caused material or substantial adverse effects upon employees

[45] I come to the same conclusion in relation to the current dispute before me. There is no doubt that the Company has made some material changes with respect to how they conduct business in the Edmonton area. However, the Union has not demonstrated, in this case, any significant adverse effects to the extent that the material notice provisions under the Collective Agreements are triggered, see **CROA 3083** and **CROA 2225**.

[46] Once again, I wish to make it clear that my decision in this matter is with respect to only the dispute before me. I make no decision with respect to whether the facts in this matter together with other events may have triggered the obligation to serve a notice of material change.

[47] Finally, the Union seeks an order for an abeyance code for all claims arising from the Company's actions pending final resolution. I agree with the Union that the establishment of an abeyance code is warranted in these circumstances, see *Canadian Pacific Railway and Teamsters Canada Rail Conference (Red Deer Interim Diversion Agreement)*, *supra*.

V. CONCLUSION

[48] After carefully considering the submissions of the parties, I make the following findings:

- The Company properly cancelled the Edmonton local agreements.
- The Edmonton Terminal includes Clover Bar and Lambton Park yards.
- The Company may require employees to commence and conclude their work assignments from any yard within the Edmonton Terminal, subject to any obligations under the Collective Agreements that may follow.
- The Scotford Yard and Ellerslie Compound are outpost terminals. As outpost terminals the August 26, 1982 and April 18, 1988 letters apply to these locations. In addition, the Company is required to abide by any applicable provisions of the Collective Agreements that may apply to an outpost terminal.
- The Company was not required to issue a notice of material change with respect to the events giving rise to these grievances.
- The Company ought to have established an abeyance code.

[49] In terms of orders, I am of the view that only my order for an abeyance code is necessary at this time. I believe it is best to remit the remainder of the remedial relief back to the parties to discuss together with the issues arising from the cancellation of the Red Deer Interim Diversion Agreement. I am hopeful that my awards will assist the parties in focusing their discussions and resolving their differences.

[50] I remain seized to address any issues arising from my award and to address any issue fairly raised by the grievances but not addressed in this award, including but not limited to any remedy flowing from this award.

Dated at Toronto, Ontario this 5th day of March 2017.



John Stout - Arbitrator