

IN THE MATTER OF AN ARBITRATION

BETWEEN

CANADIAN PACIFIC RAILWAY

(the “Company”)

and

TEAMSTERS CANADA RAIL CONFERENCE

(the “Union”)

**GRIEVANCES CONCERNING WHETHER DELSON IS PART OF THE
MONTREAL TERMINAL**

SOLE ARBITRATOR: John Stout

APPEARANCES:

For the Company:

Brian Scudds - Manager Labour Relations

Chris Clark – Assistant Director Labour Relations

For the Union:

Denis Ellickson - Caley Wray

John Campbell - General Chairman, LE-East

Wayne Apsey - General Chairman LTY-East

Dennis Psychogis - Local Chairman CTY-East

Chris Yeandel - Local Chair LE-East

HEARING HELD IN MONTREAL, QUEBEC ON JANUARY 21, 2017

AWARD

I. INTRODUCTION

[1] I was appointed by the parties 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 grievances filed by the Teamsters Canada Rail Conference's (the "Union" also referred to as "TCRC") two eastern General Committees of Adjustment ("GCAs"). The two eastern GCAs represent the Union's running trade members employed by the Company throughout the region known as Eastern Canada (Thunder Bay east).

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

[5] Both parties filed extensive written briefs in accordance with the CROA & DR rules and style.

II. THE CURRENT DISPUTE

[6] Unfortunately, the parties were unable to agree upon a Joint Statement of Issue. The Union filed an Ex Parte Statement of Issue. The Union's Ex Parte Statement of Issue provides as follows:

DISPUTE:

Appeal of the Company's unilateral change to the limits of the terminal to include Delson as part of the Montreal terminal which is in violation of the CBA as well as past practice. The cascading effects of this arbitrary change includes but is not limited to the declination of DH claims submitted.

STATEMENT OF ISSUE:

On or about November 13, 2015 the Company arbitrarily and unilaterally amended the terminal limits of Montreal, Quebec, which is a violation of the CBA with respect to outer main track switches, designated points, and deadheading to and from outpost locations. Employees have submitted deadhead claims which have been declined by the Company. The Union has filed Step 2 and Step 3 grievances regarding the substantial adverse effects which its members have sustained due to this wholesale change, including denied claims.

UNION'S POSITION:

The Union contends that the Company's initiative violates the terms of the Collective Agreements and further, that the Company is estopped from unilaterally changing the terminal limits. The Company cannot change the recognized outpost terminal of Delson to a Montreal terminal location simply by amending the Company produced time table. The arbitrary notice that has been served stating that Delson, which is outside mile 40.1 Adirondack Subdivision, is now part of the Montreal terminal cannot supersede the language in the Collective Agreement. It is the position of the Union that the Company is acting in bad faith and solely looking out for its interests regardless of the Collective Agreement, local agreements reached throughout the years with the Union, or past practice, and the Company has shown no concern for the adverse effects this will have on its employees. The Union seeks a declaration that the Company has breached the aforementioned Agreements and an order that the Company cease and desist from its ongoing breaches thereof. The Union further seeks an order that the Company pay any and all claims, past, current, and future, associated to the subject matter of this appeal. The Union requests that until such time as this appeal is resolved, an abeyance code be established as per Appendix 25 of the 2007 MOS.

The Company disagrees with the Union's position.

[7] The Company chose not to file an Ex Parte Statement of Issue. The Company's position is set out extensively in their brief. The Company's position can be summarized as follows:

- The Company submits that the Union has not demonstrated any violation of the collective agreements. In this regard, the Company asserts that the grievances have not been filed in accordance with articles 22.02 LE-East) and 71.02 (CTY-East)
- The Company maintains that Delson is located within the Montreal Terminal.
- The Company asserts that employees are not entitled to dead head payments for travel to a location (Delson) within the Montreal Terminal.

III. BACKGROUND FACTS

[8] Delson is an off-island suburb of Montreal, Quebec located at mile 35 on the Adirondack Subdivision. Delson is also situated at the junction of the Lacolle and Adirondack Subdivisions.¹

[9] Prior to November 13, 2015 there was a practice, which the Union asserts has been in place for at least 30 years, where any employee who was required to dead head to and from Delson from any location within the Montreal Terminal has been compensated pursuant to the dead head provisions of the collective agreement (or as amended by local agreement).

[10] Crews that dead headed from Delson would report to St.-Luc Yard, which is approximately 23 kilometres from Delson. The St.-Luc Yard is clearly within the Montreal Terminal.

[11] On November 13, 2015 the Company issued an email to the Union stating as follows:

Subject: Dead Heads from St.-Luc to Delson or vice versa

All,

¹ At the hearing it was explained that the name Delson comes from the Delaware and Hudson Railway.

Please be advised that after a thorough review of the time tables, the Company will no longer Be paying Dead Heads to and from Delson. Delson is within the Terminal Limits of the Montreal Terminal.

If you have any questions please do not hesitate to call me.

[12] On the same day (less than 15 minutes later), the Union sent a response that provided as follows:

Can you please explain how you came to this conclusion?

[13] The Union followed up on November 22, 2015. The Company did not respond.

[14] The Union then wrote another email on November 23, 2015 indicating as follows:

Not sure why you have not answered this? You stipulated that if we had a question they would be answered. Also could you please explain where the DOMTS. We fail to understand stand (sic) this decision being taken without consulting the Union.

[15] On December 15, 2015, the Union filed a joint Step 2 Appeal under the LE-East and CTY-East collective agreements. In their grievance, the Union requested that the Company create an abeyance code to allow employees to submit their claims.

[16] On December 17, 2015, the Union requested a response to their November 23, 2015 email.

[17] The Company responded on December 18, 2015, indicating as follows:

The (sic) Delson is included in the Montreal time table as part of the Montreal Terminal. OMTS does not Define a terminals limits, it is the point of reference for rates of pay only.

[18] On February 9, 2016, the Company replied to the grievance stating:

The outer main track switch is of course the designated point from which road Miles are counted. The passing of an outer main track switch, however, does not automatically transform a movement into a new road trip, nor does

it necessarily mean that crew moving away from a point over an outer main track switch has left the “terminal”. In the instant case, while crews are moving over the outer main track switch, they are still within the timetable limits of the Montreal Terminal, therefor (sic) never leaving the terminal.

The outer main track switch does not indicate the boundary of a “terminal”. As such there are no provisions in the CA to provide payment of Dead Heads inside the limits of a Terminal. There is case law that discusses the OMTS being inside the limits of a Terminal.

[19] On March 21, 2016 the Union appealed the Company’s decision. The Union’s appeal provides, in part, as follows:

The Company cannot change the recognized outpost terminal of Delson to a Montreal terminal location simply by amending the Company produced time table.

The arbitrary notice that has been served stating that Delson, which is outside Mile 40.1 Adirondack Subdivision, is now part of the Montreal terminal cannot supersede the language in the Collective Agreement.

For one, *Article 12.12 Designated Points* where it states;

*(1) The understanding regarding designated points where initial terminal time stops and road time begins, and vice versa, is that the outer main track switch will govern unless other more suitable points **are mutually agreed upon between the General Manager and the General Chairperson.** (emphasis added)*

(2) The following are the designated points agreed upon to govern Montreal, Toronto and Fort William Terminals:

Montreal

<i>North</i>	<i>Jacques Cartier Jct.</i> <i>8.9 Park Avenue Subdivision</i>
<i>South</i>	<i>Adirondack Jct.</i> <i>40.1 Adirondack Subdivision</i>

Throughout the CBA, Designated Points, OMTS, Dead heading are all entrenched within the Collective Agreement and have always been respected within practice. To now via arbitrary notice, without discussion locally, nor generally, suddenly change the application of dead heads is a violation of the CBA. There was never any logical reason for the Company to

suddenly make this change other than to bully, disrespect and create animosity amongst their employees.

Further to this the Company has established and recognized these locations as outpost which are reflected in the Commuter Rail Service agreements

[20] The Company responded to the Union's appeal on May 20, 2016, indicating, in part, as follows:

Arbitral jurisprudence has long found "the meaning of "terminal" however, is not clearly defined in the collective agreement... Reference to the outer main track switch is made... for the purposes of determining precise road Miles in any trip. **The outer main track switch, however, does not necessarily indicate the boundary of a "terminal".**" (Emphasis added)

Review of Article 12.12 confirms the article is in relation to the calculation of "where initial terminal time stops and road time begins" as referenced in the abovementioned jurisprudence. This Article however does not support the Union's argument that Delson is outside of the Montreal Terminal.

In contrast, review of the Montreal Terminal Time Table confirms Delson is located on the Adirondack Sub within the Montreal Terminal.

[21] The Company produced a Montreal Time Table dated March 14, 2016, which includes Delson as being within the Terminal on the Adirondack subdivision (Jct. Locolle Subdivision)

[22] The Union produced Company time tables from 1961 up to 2008 indicating that Delson was part of the Adirondack and Locolle Subdivisions (outside the Montreal Terminal limits). The Locolle Subdivision has never formed part of the Montreal Terminal.

IV. DECISION

[23] The Company asserts that the grievance has not been filed in accordance with article 22.02 LE-East and article 71.02 CTY-East.

[24] Article 22.02 of the LE-East and article 71.02 of the CTY-East collective agreements provide as follows:

Grievance concerning wage claims or alleged violations of the collective agreement

A grievance concerning the meaning or alleged violation of any one or more of the provisions of this Collective Agreement shall be processed in the following manner:

Step 1 - Presentation of Grievance to the Designated Supervisor

Within 60 calendar days from the date of the cause of grievance the employee may present the grievance in writing to the designated Company Officer who will give a decision in writing as soon as possible but in any case within 60 calendar days of date of the appeal, or this Step may be bypassed by forwarding the grievance to the Local Chairman who may initiate the grievance at Step 2.

Step 2 - Appeal to the Designated Company Officer

If a grievance has been handled at Step 1, within 60 calendar days from the date decision was rendered under Step 1 the Local Chairman may appeal the decision in writing to the designated Company Officer.

If Step 1 has been bypassed then, within 60 calendar days of the date of the cause of grievance, the Local Chairman may present the grievance in writing to the designated Company Officer who will give a decision in writing as soon as possible but in any case within 60 calendar days of date of the appeal.

The appeal shall include a written statement of the grievance along with an identification of the specific provision or provisions of the Collective Agreement, which are alleged to have been misinterpreted or violated.

Step 3 - Appeal to General Manager

Within 60 calendar days from the date decision was rendered under Step 2, the General Chairman may appeal the decision in writing to the General Manager, whose decision will be rendered in writing within 60 calendar days of the date of appeal. The decision of the General Manager shall be final and binding unless within 60 calendar days from the date of his decision proceedings are instituted to submit the grievance to the Canadian Railway Office of Arbitration and Dispute Resolution for final and binding *settlement without stoppage of work*.

[25] The Company notes that the Union only relied on article 12.12 of the CTY-East collective agreement, which provides as follows²:

12.12 Designated Points

(1) The understanding regarding designated points where initial terminal time stops and road time begins, and vice versa, is that the outer main track switch will govern unless other more suitable points are mutually agreed upon between the General Manager and the General Chairperson.

(2) The following are the designated points agreed upon to govern Montreal, Toronto and Fort William Terminals:

Montreal	
North	Jacques Cartier Jct. 8.9 Park Avenue Subdivision
South	Adirondack Jct. 40.1 Adirondack Subdivision
West	Grovehill 3.2 Winchester Subdivision (Westward Crossover
Toronto	
West	Obico (W. Wye switch) 10.0 Galt Subdivision
North	Weston Road 0.2 MacTier Subdivision
East	Staines 195.2 Belleville Subdivision

² Substantially similar language is found in article 3.12 of the LE-East collective agreement, which the Union relied upon in their brief.

Thunder Bay	
East	Current River 126.5 Nipigon Subdivision
Windsor	
Lakeshore Tower	109.77 Windsor Subdivision

[26] The Company submits that article 12.12 LE-East provides where terminal time ends and road time begins. They argue that the article does not support the Union’s position that Delson is outside the Montreal Terminal. Therefore, the Union has not identified any provisions of the Collective Agreement that have been violated.

[27] I begin by noting that the language in articles 22.02 LE-East and 71.02 CTY-East is quite broad and it is worth repeating:

The appeal shall include a written statement of the grievance along with an identification of the specific provision or provisions of the Collective Agreement, **which are alleged to have been misinterpreted or violated. (emphasis added)**

[28] Thus, the language is not limited only to alleged “violations” of the collective agreements, but also includes differences with respect to the “interpretation”. This is not surprising as section 57 of the *Canada Labour Code* R.S.C. 1985 c.L-2 requires that every collective agreement contain a provision for final settlement without stoppage of work of all differences concerning a collective agreement’s “interpretation, application, administration or alleged contravention.” In other words, the language in the collective agreement is not as narrow as the Company suggests. Moreover, even if I was to believe that such an interpretation was possible, it would be contrary to the purpose of the *Canada Labour Code* to interpret the language in such a manner.

[29] Furthermore, and as I stated in an earlier award I issued between these parties, it is well accepted that while an arbitrator is bound by the grievance(s) referred for resolution, such grievance(s) ought to be liberally construed so that

the real complaint is dealt with and the appropriate remedy provided to give effect to the parties' agreement.³

[30] Having regard to the language in the collective agreements and the wording of the grievance, I find that the dispute between the parties has been set out quite clearly.⁴ The Union is asserting that the Montreal Terminal does not include Delson. The Union relies on article 12.12 CTY-East, which they say defines the designated points of the Montreal Terminal. In effect, the complaint is that the Company has misinterpreted article 12.12 CTY-East (3.12 LE-East) by altering the limits of the Montreal Terminal without the Union's consent.

[31] The Company relies on **CROA 2** to support their argument that no dead head payment is required when travelling between points within a terminal. The relevant portions of Arbitrator Hanrahan's ruling is set out below:

In other words, travelling between two points within a terminal when not on duty is not recognized as calling for payment under that rule.

...

The Arbitrator can find nothing in the applicable provisions of these agreements requiring payment either under the "dead rule" or the "terminal time rule" for employees not on duty. At the present time management has exercised its unhampered prerogative to designate Symington yard within the Winnipeg terminal. For the application of the payment sought, there is nothing in the agreements requiring designation of it otherwise.

[32] The Company also referenced **CROA 479**, which is an award of Arbitrator Weatherill. The Company directed my attention to the following comments of Arbitrator Weatherill:

The meaning of "terminal" however, is not clearly defined in the collective agreement, at least, not for the purpose of determining the area within which initial and final terminal switching may be performed. Reference to

³ See Canadian Pacific Railway and Teamsters Canada Rail Conference 2016 CanLII 78634 citing *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324* [2003] 2 S.C.R. 157 at paragraphs 68-69

⁴ I also note the specific comments found in the union's appeals, Ex parte Statement of Issue and the Company's responses.

the outer main track switch is made in Article 11(e) for the purpose of determining precise road miles in any trip. The outer main track switch, however, does not necessarily indicate the boundary of a "terminal". For the purpose of initial or final terminal switching, the yard switching limits would appear to be the appropriate limits for such work. This would appear to have been assumed in Case No. 194, where it was agreed that crews on one subdivision could properly perform work in connection with their own trains on another subdivision, "provided it was within the confines of the yard". In that case, as here, the yard had been extended. Now in the instant case the Union contended in argument that there had been no agreement, as required by Article 21, to an extension of yard switching limits. In the joint statement of issue, however, the sawmill in question is described as being situated "within the Midway yard limits". The instant case must therefore be decided on the basis of the joint statement, although the award herein does not involve any finding of fact in that regard, and is limited to the particular case as stated. The claim was not related to the type of work performed, but rather to the trackage on which it was performed. While I agree with the Union contention that the Penticton crew would be entitled to such work if performed west of the terminal, and while I agree as well that the extension of yard limits is a matter for agreement of the parties pursuant to the collective agreement, I am bound in this particular case by what is set out in the joint statement of issue. Thus I must conclude that the work was performed within the Midway terminal. There is no question, it may be noted, of conflict with any yard crew's work.

For the foregoing reasons, the grievance must be dismissed.

[33] It should be noted that in **CROA 2** Arbitrator Hanrahan refers to management's "unhampered prerogative to designate Symington a yard within the Winnipeg terminal." This must be contrasted with **CROA 479** where Arbitrator Weatherill indicates that "the extension of yard limits is a matter for agreement of the parties pursuant to the collective agreement."

[34] In my view article 12.12 CTY-East and article 3.12 LE-East set out the parties agreement with respect to the limits of the Montreal Terminal. Unlike in **CROA 2**, the Company does not have the "unhampered prerogative" to designate the limits of the Montreal Terminal. The language found in these collective agreements is clear with respect to the limits of the Montreal Terminal. Moreover, the language is also clear that any alteration is subject to mutual agreement between the Company and the General Chairman.

[35] The long standing past practice supports my interpretation. The Union's uncontested evidence is that for 30 years, or more, employees required to dead head from any location in the Montreal Terminal to Delson were always compensated pursuant to the dead head provisions of the collective agreements.

[36] The jurisprudence is clear that employees are not entitled to dead head payments for movements within a terminal. As stated by Arbitrator Michel Picher in **CROA 3490**:

As a matter of first principle, it has long been established within the jurisprudence of this Office that employees are not entitled to deadheading payments for movement between the yards of a single terminal. That cornerstone principle was established in the decision of Arbitrator Hanrahan in **CROA 2**. In that case the predecessor of the Union claimed the entitlement to deadheading payments of employees who were required to travel from Symington Yard to the Winnipeg Station, all within the terminal of Winnipeg. In the words of Arbitrator Hanrahan, with respect to the deadheading rule now contained in article 17 of the collective agreement:

In other words, travelling between two points within a terminal when not on duty is not recognized as calling for payment under that rule.

[37] The Company would have no obligation to compensate employees for a dead head to or from Delson if it was within the Montreal Terminal limits. I can't believe that the Company would benevolently compensate employees for such a long time. Rather, it is my view that the Company shared the Union's interpretation that Delson was outside the Montreal Terminal.

[38] I am further supported in my opinion, by the numerous other documents produced by the Union, including time tables.

[39] The only document produced by the Company supporting their position is a recent time table, dated after the Union filed the grievance. In my view, this recent time table is not at all helpful in resolving this dispute.

[40] I acknowledge the Company's argument that the outer main track switch does not automatically indicate the boundary of a terminal. I do not quarrel with

this assertion. In fact, the language in article 12.12 anticipates that the parties may “mutually” agree upon more suitable points. However, article 12.12 also includes the parties agreement on the specific boundaries of certain terminals, including Montreal.

[41] The Company also relies on the award of Arbitrator Michel Picher in **CROA 1081** to support there argument. In my view, **CROA 1081** is distinguishable. In **CROA 1081** Arbitrator Picher noted, as Arbitrator Weatherill did in **CROA 479**, that the meaning of terminal is not clearly defined in the collective agreement. It should be noted that neither Arbitrator Weatherill nor Arbitrator Picher considered language similar to article 12.12, which specifically defines the limits for three terminals (Montreal, Toronto and Fort William).

[42] The matter before me concerns the Montreal Terminal; the limits of which are defined in the collective agreement. The Montreal Terminal’s southern point is mile 40.1 Adirondack Subdivision. Delson is found at mile 35 of the Adirondack Subdivision at the junction of the Lacolle Subdivision, which is outside the agreed upon limits of the Montreal Terminal.

[43] In the event, that I am found to be mistaken in my interpretation of the collective agreement language, I also find that the Company is estopped from taking the position that Delson is inside the Montreal Terminal. The fact is that the parties have treated Delson as being outside the Montreal Terminal and the Company made dead head payments for 30 or more years. It would be inequitable to permit the Company to alter such a long standing practice until after the parties had an opportunity to negotiate.

[44] Finally, the Company failed to establish an abeyance code as requested by the Union. I agree with the Union that the Company ought to have created an abeyance code. The failure to establish an abeyance code violates Appendix 30. It would be unreasonable to allow the Company to profit from their breach of a

collective agreement obligation. In these circumstances, I agree with the Union that time limits ought to be extended for crews to file claims.

V. CONCLUSION

[45] Therefore, after carefully considering the parties' submissions, I am compelled to find that the Union's position is correct. The collective agreements and past practice confirm that Delson is outside the Montreal Terminal. The Company is not at liberty to unilaterally declare Delson to be within the Montreal Terminal.

[46] I make the following orders and declarations:

- The Company is ordered to cease and desist violating the collective agreements.
- The Company is directed to compensate all crews who have been and are required to dead head to and from Delson in accordance with the collective agreements.
- The Company is ordered to create an abeyance code for all claims arising from the Company's decision to stop making dead head payment to and from Delson.
- The Company is ordered to extend time limits for crews to file claims and produce any records necessary for crews to establish entitlements.

[47] 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 the quantum of damages arising for the Company's breach of the collective agreements.

Dated at Toronto, Ontario this 7th day of February 2017.



John Stout - Arbitrator