

IN THE MATTER OF AN ARBITRATION

BETWEEN

CANADIAN PACIFIC RAILWAY

(the “Company”)

and

TEAMSTERS CANADA RAIL CONFERENCE

(the “Union”)

**GRIEVANCE CONCERNING CANCELLATION OF THE SHEPARD
AGREEMENT**

SOLE ARBITRATOR: John Stout

APPEARANCES:

For the Company:

Chris Clark – Assistant Director Labour Relations

David Pezzaniti – Labour Relations Officer

For the Union:

Michael Church - 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

Greg Lawrenson – Vice General Chairman, LE-West

Joe Harris – Local Chairman – Port Coquitlam BC

Trent Haug – Local Chairman – Calgary AB

HEARINGS HELD IN CALGARY, ALBERTA ON MAY 12, 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 a grievance 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).

[5] The grievance arises from the Company’s cancellation of an agreement concerning the operation of the Shepard Intermodal Facility located at Calgary, AB (the “Shepard Agreement”). The grievance was heard in Calgary, Alberta on May 12, 2017, together with another grievance relating the cancellation of a Memorandum of Agreement concerning the operation of the Intermodal Services Facility located at Pitt Meadows B.C. (the “Pitt Meadows MOA”).

[6] The Company filed one brief addressing both matters, while the Union filed two separate briefs.

[7] The grievance concerning the cancellation of the Pitt Meadows MOA is addressed in a separate award.

II. THE CURRENT DISPUTE

[8] The parties were unable to agree upon a Joint Statement of Issue.

[9] The Union filed an Ex Parte Statement of Issue, which sets out the dispute and their position. The Union's Ex Parte Statement of Issue states as follows:

DISPUTE

Grievance regarding the Company's cancellation of the Shepard Agreement.

EX PARTE STATEMENT OF ISSUE

On March 20, 2015 the Company issued a 30 day notice to the Union to cancel the longstanding Shepard Agreement, which outlines the manner switching operations are conducted at the Shepard Intermodal Facility. The agreement also allowed the Company to man the assignments established at the facility with Calgary based employees.

Effective April 19, 2015 the Company discontinued the aforementioned agreement, yet continued to operate assignments based at Shepard with Calgary employees.

THE UNION'S POSITION

The Union submits the Shepard Agreement does not contain a cancellation clause. For this reason, and due to the signatory parties involved, the Union contends the Shepard Agreement forms part of the Collective Agreement and cannot be cancelled in the manner prescribed or under the provisions of Appendix 37.

The Union further submits the Shepard Intermodal Facility is an intermediate location on the Brooks Subdivision. The Union therefore contends that without a mutually negotiated agreement providing otherwise, the work being performed falls under the jurisdiction of the Medicine Hat terminal. Furthermore, the Union contends that any such transfer of work from Medicine Hat to Calgary must be

considered a material change in working conditions, which in turn must be met with the provisions of Articles 72 CTY/34 LE.

The Union contends the above described Company actions are in violation of the respective Collective Agreements, including but not limited to 12, 15, 20, 24, 40, 41, 43 and 72 CTY and 4, 5, 8, 21, 25, 30, 34, and 35 LE.

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 as outlined.

The Union is seeking an order that the Company rescind the cancelation of the Shepard Agreement immediately, and make the necessary arrangements to make all affected employees whole. The Union also requests the Company provide all necessary information as outlined in our grievance in order to accurately assess the extent of all losses. The Union is also seeking any further relief the Arbitrator deems necessary in order to ensure future compliance with the Articles in question

THE COMPANY'S POSITION

The Company disagrees and denies the Union's request.

[10] The Company did not file an Ex Parte Statement of Issue. The Company's position is set out in their brief. In summary, it is the Company's position that the Shepard Agreement is a "local rule or agreement", which was cancelled upon proper notice. The Company also takes the position that the cancellation of the Shepard Agreement does not engage the material change provisions of the Collective Agreements.

III. BACKGROUND FACTS

[11] Prior to the fall of 1998, the Company operated intermodal services at its Calgary (Alyth) Yard. The Union's members performed the work under the terms and conditions of employment found under the Collective Agreements in place at the time.

[12] In March 1998, the Company and Union engaged in discussions relating to the Company's new dedicated intermodal facility located on Shepard AB (the "Shepard Intermodal Facility").

[13] The Shepard Intermodal Facility is located at approximately mile 167 on the Brooks Subdivision. The Shepard Intermodal Facility is also only 8 miles from the Calgary Terminal Alyth Yard and over 160 miles from Medicine Hat, AB.

[14] The Company advised the Union, that they were contemplating utilizing the services of a third party to operate the Shepard Intermodal Facility. The Union took the position that the work fell under the jurisdiction of the Collective Agreement and the Company was obligated to serve a notice of material change.

[15] There is no dispute that the opening of the new Shepard Intermodal Facility did not in fact engage the material change provisions of the Collective Agreements. In fact, the opening of the new Shepard Intermodal Facility resulted in no loss of jobs for the Union.

[16] On July 25, 1998 the parties entered into an operating agreement with respect to the new intermodal facility located in Calgary, AB (the "Shepard Agreement").

[17] The Shepard Agreement addresses the "special operating requirements of the Shepard Intermodal Facility, including training, hours of work, rates of pay, holidays, relief, duties, and created the new positions of Intermodal Locomotive Engineer (ILE) and Intermodal Conductor/Foreperson (ICF). It is notable that the Shepard Agreement indicates that "If a conflict exists between the terms of this Agreement and the applicable collective agreement, this Agreement will take precedence." The Shepard Agreement does not have a cancellation clause. The Shepard Agreement was signed by the Union's General Chairman and the

Company's Director of Labour Relations and District General Manager. The Agreement was also ratified by the Union's members.

[18] On March 20, 2015, the Company sent the Union a notice indicating that they were "exercising the 30-day notice of cancellation" of the Shepard Agreement.

[19] The Union filed a grievance on April 3, 2015. The grievance was declined by the Company on May 30, 2015. The Union advanced the grievance to Step 3 on July 22, 2015. The grievance was subsequently referred to me for resolution.

IV. DECISION

[20] The issue to be determined is whether the Company can cancel the Shepard Agreement upon 30 days notice.

[21] As indicated earlier in this award, this matter was heard at the same time as a grievance concerning the Company's cancellation of the Pitt Meadows MOA.

[22] The Shepard Agreement and the Pitt Meadows MOA are similar agreements negotiated between the parties relating to the operation of the Company's intermodal facilities in western Canada. The terms and conditions of the Shepard Agreement and Pitt Meadows MOA are also strikingly similar. In fact the evidence indicates that the Shepard Agreement was the "basis for discussions" with respect to the Pitt Meadows MOA.¹

[23] In my award addressing the cancellation of the Pitt Meadows MOA, I found that the Pitt Meadows MOA was not a local rule or agreement. I also found that the Pitt Meadows MOA could not be unilaterally cancelled.

¹ See email from Mike Keiran to Andrew Shields dated February 29, 2000.

[24] The relevant portions of the Pitt Meadows award are set out below:

Article 79.01 CTY-W and 35.01 LE-W of the Collective Agreement defines local agreements as follows:

Rules necessary to meet local conditions and not inconsistent with the provisions of this Agreement may be negotiated and made effective, subject in each case to the approval of the General Manager and the General Chairman.

In my view, the Pitt Meadows MOA is not a local rule or agreement. The provisions of the Pitt Meadows MOA are not rules necessary to meet local conditions that are consistent with the provisions of the Collective Agreements. Rather, the Pitt Meadows MOA recognized the parties' agreement that bargaining unit employees would operate the Pitt Meadows Intermodal Facility. The Pitt Meadows MOA goes on to set out the terms and conditions of employment for the employees who will operate the Pitt Meadows Intermodal Facility. The parties specifically recognized that the terms of the Pitts Meadows MOA conflict with the Collective Agreements and have provided that the provisions of the Pitts Meadows MOA would take precedence.

I agree with the Union's submission that an agreement that suspends or supersedes portions of the Collective Agreements cannot be considered a local rule or agreement as defined by the Collective Agreements.

At the same time, I disagree with the Union's submission that Pitt Meadows MOA is a material change agreement. It is clear that the Pitt Meadows MOA was negotiated within the context of a material change involving the closure of Mayfair Intermodal Facility. However, the parties negotiated a specific agreement addressing the adverse effects of the closure in the Mayfair Closure MOA. The Pitt Meadows MOA is a separate agreement that addresses the operations at the new facility.

While I have found that the Pitt Meadows MOA is not a material change agreement, it is my opinion that such distinction is without a difference. That is because it is my view that the Pitt Meadows MOA is similar in nature and has the same effect as a material change agreement. In this regard, the Pitt Meadows MOA, like a material change agreement, amends or varies the terms of the Collective Agreements.

The effect of such agreements was explained by arbitrator Michel Picher in CROA 2719, where he stated as follows:

Firstly, the Arbitrator cannot sustain the position of the Company to the effect that the understanding of 1960 is somehow outside the terms of the collective agreement. It is well settled that in a collective bargaining relationship the sum total of a collective agreement may be more than what appears in the collective agreement booklet or document published by the parties for ease of reference by employees and Company officers. A collective agreement may include a substantial variety of ancillary

documents, including letters of understanding, job security agreements, supplementary agreements, insurance plans or plans in respect of pensions, and other similar documents intended to form part of the parties' collective bargaining relationship, bearing in a general way on terms and conditions of employment. (See generally, Brown & Beatty, **Canadian Labour Arbitration**, para 4:1200).

Section 3.1 of the **Canada Labour Code** contains the following definition,

“collective agreement” means an agreement in writing entered into between an employer and a bargaining agent containing provisions respecting terms and conditions of employment and related matters.

It is well established that there may be more than a single document signed by both parties to satisfy the requirement of writing for the purposes of the **Code**. There can be an exchange of documents, or a set of documents, which, taken together form sufficient evidence of a collective agreement, in whole or in part.....

[25] In my opinion, these same principles apply to the Shepard Agreement. In the Shepard Agreement, the parties acknowledge their desire to have bargaining unit employees operate the Shepard Intermodal Facility. The parties entered into the Shepard Agreement with respect to the terms and conditions of employment for operating the Shepard Intermodal Facility with bargaining unit employees. The Shepard Agreement provides for specific variances or amendments to the Collective Agreements with respect to operating the Shepard Intermodal Facility. In my view, the Shepard Agreement is clearly a document that forms part of the Collective Agreement between the parties.

[26] The parties have governed themselves in accordance with the terms of the Shepard Agreement for over 15 years, which included the renegotiation of several Collective Agreements. In my opinion, the Shepard Agreement continues to be binding upon the parties. As such the terms of the Shepard Agreement are enforceable as part of the Collective Agreements. The Shepard Agreement cannot be unilaterally cancelled, nor can the terms be altered without mutual agreement. The Company may seek to obtain an amendment or cancellation by agreement with the Union, either during the term of the Collective Agreements or

at the time of renewal. However, any such amendment or cancellation must be by mutual consent.

V. CONCLUSION

[27] After carefully considering the submissions of the parties, I find the Company breached the Collective Agreement by unilaterally cancelling the Shepard Agreement.

[28] I make the following orders:

- The Company is ordered to cease and desist violating the Collective Agreements.
- The Company is ordered to make all adversely affected employees whole for their losses.
- The Company is ordered to extend the time limits for crews to file claims and produce any records necessary for crews to establish entitlements.

[29] 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 29th day of May 2017.

A handwritten signature in dark ink, consisting of several loops and a long horizontal stroke extending to the right.

John Stout - Arbitrator