IN THE MATTER OF AN ARBITRATION

BETWEEN

CANADIAN PACIFIC RAILWAY COMPANY

(the "Company")

and

TEAMSTERS CANADA RAIL CONFERENCE

(the "Union")

GRIEVANCE CONCERNING THE CANCELLATION OF THE PITT MEADOWS, B.C. INTERMODAL SERVICES FACILITY OPERATING 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 a Memorandum of Agreement concerning the operation of the Intermodal Services Facility located at Pitt Meadows B.C. (the "Pitt Meadows MOA"). The grievance was heard in Calgary Alberta on May 12, 2017, together with another grievance relating the Company's cancellation of an agreement concerning the operation of

the Shepard Intermodal Facility located at Calgary, AB (the "Shepard Agreement").

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

[7] The grievance concerning the cancellation of the Shepard Agreement 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 cancelation of the Memorandum of Agreement Concerning the Operation of Intermodal Services Facility at Pitt Meadows, BC. (Pitt Meadows MOA).
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> **EX PARTE STATEMENT OF ISSUE**
> On April 14, 1999 the Union and Company ratified the Pitt Meadows MOA, which outlined the terms of manpower regarding special operating requirements for the new facility which opened July 1, 1999. The parties subsequently negotiated terms of the material change in working conditions resulting from the closure of the Mayfair Intermodal Facility, and the transfer of work to the Pitt Meadows Facility.
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> On February 6, 2015 the Company issued notice to the Union to cancel the longstanding Pitt Meadows MOA, along with existing assignments effective March 30, 2015. The Company initially bulletined one road switcher and 2 yard assignments to report at Coquitlam, followed by notification on April 30, 2015 that the RS16 road switcher and 0630 yard assignment(s) would report directly at the Pitt Meadows facility.
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> **UNION'S POSITION**

The Union contends the Pitt Meadows MOA was negotiated as a result of a material change in working conditions, does not contain a cancellation clause, and therefore cannot be cancelled in the manner described. The Union also contends the Pitt Meadows MOA cannot be considered a Local Agreement, thus removing any ability for the Company to cancel under the provisions of Appendix 37.

The Union submits that due to the above described actions, the Company has circumvented the negotiated and agreed terms of the Pitt Meadows MOA. The Union further 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 provisions 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 Pitt Meadows MOA immediately, and make the necessary arrangements to make all affected employees whole. 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 with the Union's contentions.

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

III. BACKGROUND FACTS

[11] On January 21, 1999, the Company served a notice of material change on the Union's predecessors (the United Transportation Union and the Brotherhood of Locomotive Engineers) advising of its intention to abolish the two Mayfair Roadswitcher assignments within the Coquitlam/Vancouver Terminal at

Mayfair B.C., effective July 31, 1999. The Company indicated that the assignments would no longer be required due to the closure of the Mayfair Intermodal Facility and subsequent land sale.

[12] In February 1999, the Company and the Union entered into discussions with respect to the operation of a new intermodal facility located at Pitt Meadows B.C. (the "Pitt Meadows Intermodal Facility"). The evidence indicates that, at the time, the Company was considering the use of a third party to operate the Pitt Meadows Intermodal Facility. The Union took the position that the operation would be bargaining unit work.

[13] In April 1999, the Union and the Company entered into an agreement with respect to operation of the new Pitt Meadows Intermodal Facility (the Pitt Meadows MOA).

[14] The Pitt Meadows MOA addresses the "special operating requirements of the Pitt Meadows 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 Pitts Meadow MOA indicates that "If a conflict exists between the terms of this Agreement and the applicable collective agreement, this Agreement will take precedence." The Pitt Meadows MOA does not have a cancellation clause. The Pitt Meadows MOA 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.

[15] The Company sent the Union a letter on July 30, 1999 requesting that the eastern designated point of the Coquitlam Terminal be moved to coincide with the opening of the new Pitt Meadows Intermodal Facility. The Union agreed with the Company's request to move the eastern limit of the Coquitlam Terminal

to mile 106.4 Cascade Subdivision, which would include the Pitt Meadows Intermodal Facility.

[16] On June 11, 2001 the Company and the Union reached an agreement to address the adverse effects flowing from the closure of the Mayfair Intermodal Facility (the "Mayfair Closure MOA"). The Mayfair Closure MOA begins by noting that the Company ceased operations at the Mayfair Intermodal Facility on July 9th 1999. "Coincident with this closure, intermodal operations commenced at the new Pitt Meadows Intermodal Facility."

[17] The operations at the Pitt Meadows Intermodal Facility continued under the Pitt Meadows MOA until February 2015.

[18] On February 26, 2015, the Company sent the Union a notice indicating that they were "exercising the 30-day notice of cancellation" of the Pitt Meadows MOA.

[19] A March 16, 2015 Company Bulletin notes that the three existing "VIF Assignments" for the Pitts Meadows Intermodal Facility were cancelled effective 2201, March 29, 2015. At the same time the Company established one new Road Switcher (RS 16) and two new Yard assignments (0630 Coquitlam Yard and Swing Coquitlam Yard). In a further Bulletin dated April 30, 2015 the Company informed members of Division 320 that the 0630 Yard and RS16 assignments were now to report to the Pitt Meadows Intermodal Facility.

[20] The Union filed a grievance on May 21, 2015. The grievance was declined by the Company on July 16, 2015. The Union advanced the grievance to Step 3 on September 9, 2015. The grievance was subsequently referred to me for resolution.

IV. DECISION

[21] The issue to be determined is whether the Company can cancel the Pitt Meadows MOA upon 30 days notice.

[22] On its face the Pitt Meadows MOA has no cancellation provision.

[23] The Union argues that the Pitts Meadows MOA is essentially a material change agreement, which arose from the notice of material change relating to the closure of the Mayfair Intermodal Facility. They assert that a material change agreement cannot be unilaterally cancelled.

[24] It is well established that an agreement reached through the material change provisions cannot be unilaterally cancelled. In a April 1, 1984 award between these two parties, Arbitrator David Kates stated the following:

> …. I do not hold that the Company can unilaterally withdraw (or cancel) the commitments it has made to the trade unions provided in the Coal Agreements without the latter's consent. In my view, those Agreements have supplanted these provisions of the collective agreement behind which the company must continue to adhere to the status quo ante the proposed material change until such time as the parties might negotiate a different accommodation. In sum, on this issue the trade union's position must prevail.

[25] The Company disagrees with the Union's position, asserting that the Pitt Meadows MOA is a local rule or agreement, which may be cancelled upon 30 days notice in accordance with Appendix 37.

[26] Arbitrator Michel Picher had an opportunity to consider Appendix 37 in a July 7, 2014 award between these parties relating to the replacement of directional pools and the establishment of common pools at various terminals, see *Canadian Pacific Railway Company and Teamsters Canada Rail Conference* 2014 CanLII 77078 (ON LA).

[27] Arbitrator Picher's award is instructive and portions are worth reproducing:

> Perhaps most significantly, as a general rule, traditionally local rules have contained provision for either party to serve notice on the other with respect to cancelling or amending a local rules agreement. In 2007, the parties expressly negotiated language giving either party the ability to trigger a cancellation clause upon 30 days' notice. That is reflected in paragraph 4 of the Appendix 37 reproduced above.
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> It is not substantially disputed before the Arbitrator that directional pool arrangements as they may have existed across the system are essentially a form of local rule. As such, I am compelled to conclude, on the basis of the material before me, that such rules are not eternal, and that they may be properly terminated by either party, subject to adherence to the proper notice requirements. That, in my view, is manifestly the case for those local agreements concerning directional pools which are the subject of this dispute.
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> It would, of course, have been open to the Union to negotiate within the four corners of the collective agreement clear language identifying existing freight pools at various locations, and limiting the Company's ability to amend or abolish those pools. There is, however, no such language in the collective agreements which has been referred to the Arbitrator by the Union. I am compelled to agree with the Company's submission that over time the Union did not seek to protect directional pool running within the terms the collective agreements. That concept was left to be regulated by local rules which, by their very nature, are generally subject to cancellation by either party, as has been explicitly provided for all local rules by the provisions of paragraph 4 of Appendix 37 of the collective agreements governing Locomotive Engineers and Trainpersons both East and West.
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> How, then, must this dispute be resolved? For all of the reasons elaborated above, I am compelled to the conclusion that the parties have not negotiated within the terms of their collective agreements any limitation on the ability of the Company to either establish or abolish directional pools nor any limit on the ability of the Company to establish common pools to handle multi-directional service. There can be little doubt but that on a system-wide basis, for both Locomotive Engineers and Conductors, pool arrangements evolved as local agreements made between the parties. Clearly, as of December 5, 2007 and the execution of Appendix 37 those local rules became subject to a 30 day cancellation clause available to either party. In that context it was entirely open to the Company to put the Union on notice that local rules in respect of the establishment of directional pools were to be abolished and that employees would thereafter be placed into common pools for the purposes of their work assignments.
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> …
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> In the result, I am satisfied that this matter can be dealt with, at least at this stage of the proceedings, by the expression of certain guiding principles by the Arbitrator. Firstly, at those locations in Canada where directional pools have been established pursuant to local rules, and where the agreement does contain

> a cancellation clause, it is fully open to either party to terminate that arrangement in accordance with the notice provisions. Secondly, in locations where directional pools have been established on the basis of local rules which do not contain any cancellation clause, by the operation of Appendix 37 such local rules can be cancelled by either party on 30 days' notice. Thirdly, where agreements have been made by the parties, as for example in the Material Change Agreement relating to Souris, Manitoba where directional pools are expressly established and no cancellation provision is provided, it is not open to the Company to unilaterally cancel or abolish those directional pools. Any change in that regard must await renegotiation of the collective agreement.

[28] Earlier this year, in an award between these two parties concerning the Red Deer Interim Diversion Agreement, I indicated my agreement with Arbitrator Picher's reasoning, see *Canadian Pacific Railway Company and Teamsters Rail Conference (Red Deer IDA)* 2017 CanLII 5244 (ON LA). Thus, if the Pitt Meadows MOA is a local rule or agreement, then the Company may properly cancel it upon 30 days notice.

[29] 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.

[30] 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.

[31] 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.

[32] 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.

[33] 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.

[34] 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).
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> 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.
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> 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…..

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

[36] The parties have governed themselves in accordance with the terms of the Pitt Meadows MOA for over 15 years, which included the renegotiation of several Collective Agreements. In my opinion, the Pitt Meadows MOA continues to be binding upon the parties. As such the terms of the Pitt Meadows MOA are enforceable as part of the Collective Agreements. The Pitt Meadows MOA 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

[37] After carefully considering the submissions of the parties, I find that the Company breached the Collective Agreement by unilaterally cancelling the Pitt Meadows MOA.

[38] 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.

[39] 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.

John Stout - Arbitrator