CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 4413-S

Heard in Ottawa, June 13, 2025

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

There appeared on behalf of the Company:

R. Singh	– Senior Manager, Labour Relations, Calgary
F. Daignault	– Director, Labour Relations, Montreal
M. Smadella	– Assistant Superintendent, Kamloops

And on behalf of the Union:

R. Church	– Counsel, Caley Wray, Toronto
M. Anderson	– Vice General Chairperson, CTY-W, Edmonton
R. Donegan	– General Chairperson, CTY-W, Saskatoon
D. White	– Local Chairperson, Vancouver

SUPPLEMENTAL AWARD OF THE ARBITRATOR

1. The parties before the Arbitrator are the Canadian National Railway Company ("CN" / "the Company") and the Teamsters Canada Rail Conference ("the Union").

2. The dispute referred to the Arbitrator involves Collective Agreement 4.3 between the Union and the Company which governs rates of pay and working conditions for Conductors, Trainpersons and Yard Service Employees ("CTY") in the Prairie and Mountain Regions (Western Canadian Lines).

3. A decision was issued in CROA 4413 on July 24, 2015, upholding the Union's grievance. The decision found that Article 83A.1(e) had been breached because the Yard Conductor Lester completed three stops without an assistant conductor. The provision allowed no more than two stops on route without an assistant conductor.

4. The final paragraph of that decision, para. 17, read as follows:

   17. The Company was therefore in breach of the collective agreement for requiring Yard Conductor Lester to do three transfers conductor (yard) only. The grievance is accordingly upheld. The remedy is referred to the parties for resolution. I remain seized of the implementation.

5. The parties have been unable to agree upon the remedy. This Supplemental Award addresses the remedy.

6. The parties' description of the DISPUTE and their JOINT STATEMENT OF ISSUE read:

   DISPUTE:
   Remedy payment for the violation of Article 83A of Conductor Lester as outlined in CROA 4413.

   JOINT STATEMENT OF ISSUE (JSI):

   On July 24, 2015, Arbitrator Christopher Albertyn upheld the Unions grievance and remitted the required remedy payment back to the parties, seizing himself on the matter.

   It is the Union's position that the Arbitrator upheld the violation of Article 83A, that the Company failed to call the proper crew consist to perform the work assigned. Therefore, the most available employee is entitled to a 100-mile payment, the earnings they would have earned had the Company adhered to the terms of the Collective Agreement. Further substantiating the Union's position, the Collective Agreement provides clear and unambiguous language for what constitutes minimum payment, or a "Basic Day" (Article 77 of Agreement 4.3), that has been historically used to remedy violations of the Collective Agreement. Furthermore, had the Company supplied the proper crew consist, they would have been paid a basic day regardless of how long the work performed took to complete. Furthermore, the Grievor himself should receive a remedial payment, as determined by the Arbitrator, as he was forced to perform work outside the confines of the Collective Agreement. In the event the Company cannot locate the most available employee and/or pay the Grievor, it is the Union's position that the Union itself should be compensated any remedial payments.

   It is the Company's position that the Union has failed to progress the matter for the remedy for some nine years and this was only initiated as a

result of the CROA 4883 Supplemental decision. It is the Company's position that the most available employee should only be made whole for the actual time lost for the work of the shift that contained the violation, which is not more than 2 hours. The impacted employees should be made whole for the time it took to perform the leg of the transfer from the point they deviated to Sapperton to when they returned enroute to Lynn Creek.

FOR THE UNION:	FOR THE COMPANY:
_____	_____
Raymond S. Donegan	Josee Girard
General Chairman	Sr. Vice President Labour Relations
TCRC-CTY West	and Human Resources

Preliminary Objection

7. The Employer raises a preliminary objection arguing that the remedy claim should be dismissed because the Union failed to progress it and therefore abandoned its claim.

8. The obligation to resolve the remedy rested on both parties. It was a joint obligation. Effort was made by the parties, but those efforts did not result in a resolution, hence it returning to the arbitrator, pursuant to being seized. There is no evidence of prejudice to the Company as a result of the delay in resolution. There is also no unequivocal evidence of an express step being taken by the Union indicating abandonment of its entitlement to a remedy[1].

9. Also, as the Union's argues, in addressing the referral of this matter back to the arbitrator, pursuant to being seized, several fresh steps were taken. No reference was made to the claim of abandonment during the communications between the parties regarding the implementation of CROA 4413 and the referral back to the arbitrator. The first mention of abandonment was in the Company brief filed four days prior to the hearing. The long delay in raising the claim of abandonment likely amounts to a waiver of the entitlement to make that claim[2].

10. In all of these circumstances, the arbitrator is satisfied the entitlement to claim a remedy has not been abandoned.

[1] *WPA v Windsor Police Services Board*, 2012 CarswellOnt 7267 (Lynk).
[2] *OPSEU and Ontario (Ministry of Children, Community and Social Services) (Jackson), Re* (2020) 319 L.A.C. (4th) 113 (Banks).

Substantive Dispute

1. To recap the facts of this matter, the additional stop at Sapperton meant that there were three stops on route between the originating and destination yards. The collective agreement permitted Yard Conductor Lester to cover two such stops without an assistant conductor had the entire journey been involved only two stops. However an assistant conductor was needed once the journey exceeded two stops. That was the breach of the collective agreement.

2. The Union argues, and the arbitrator accepts, that the purpose of a monetary remedy is to put those affected in the position they would have been had the breach not occurred[3].

3. The Union also claims that a remedy must not only compensate for actual losses, it must also serve as a deterrent against future breaches. For this, the Union relies on the NOTE that follows Article 121.10 of Agreement 4.3 between the parties. It includes: "An agreed to remedy is intended to ensure the continued correct application of the Collective Agreement".

4. On the basis of the above submissions, the Union claims monetary remedies as follows:

    - In general damages, payment equivalent to 8 hours of work to the Yard Conductor Lester, who performed the work because he was required to perform the work outside of the confines of the collective agreement; and
    - Payment equivalent to 8 hours of work to the most available employee who should have accompanied Yard Conductor Lester during that work.

5. In its brief the Union also sought, as part of its claim for general damages, that a cease-and-desist order be issued against the Company to deter future breaches. Without prejudice to any future hearing on similar or other facts, the request for a cease-and-desist order was not pursued at the hearing.

6. As explained in the JSI, the Company responds that the most available employee should be made whole only for the actual time lost of the work of the shift that contained the violation, which is not more than 2 hours, i.e., for the time it took to perform the leg of the transfer from the point of deviation to Sapperton to when there was return on route to Lynn Creek.

[3] *International Chemical Workers, Local 346 and Canadian Johns Manseville Co. Ltd.* (1971), 22 L.A.C. 396 (P. Weiler); *Fanshawe College and O.P.S.E.U.*, Local 110 (1994), 39 L.A.C. (4th) 129 (Swan); CROA 4883.

APPROPRIATE REMEDY:

7. The Union asks for general damages. The general damages are for 8 hours pay for Yard Conductor Lester, in addition to the wages he was paid, because he was required to work in a manner not permitted by the collective agreement.

8. This is not an appropriate case for general damages. There is no evidence of repeated breaches, nor of any deliberate disregard for the collective agreement provision, nor any evidence of bad faith by the Company, nor any other egregious conduct. There was a genuine difference of opinion in the application of the collective agreement. At the time, the Company thought it was operating correctly under the collective agreement. In these circumstances, there is no justification to award general damages. Those impacted should be made whole for the breach in special damages, but there is no foundation for an award of general damages.

9. Yard Conductor Lester was compensated for all the time he worked. He is not entitled to any additional compensation as a remedy, because there are no special circumstance, as described, warranting general damages entailing payment beyond what he earned[4].

10. There was, however, a loss of income for the most available employee for the work they would have done as the additional conductor for the duration of the journey. For this the Union claims a 100-mile payment of 8 hours pay.

11. The Company argues the compensation should amount to no more than the wages for 2 hours work, the equivalent of the time taken for one additional transfer.

12. The difficulty with this submission is that the requirement to include an additional conductor was not just for one additional transfer. It was required for the whole journey. This is because, as the Union points out at para. 22 of its brief, “if a train is required to perform more than two stops enroute”, the Company cannot send a brakeman to meet the Conductor-only train enroute (at the second stop) to cover the last leg of the journey. The brakeman must be called from the initial terminal[5].

13. If the most available employee was already on duty and could have been assigned to work, that person is to be paid for the 8 hours. If an employee had to be called in to perform this work, then they would have been entitled to be paid for 8 hours.

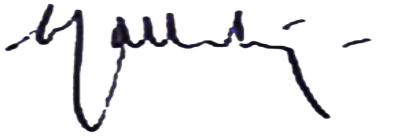
[4] See CROA 4876.

[5] See question 15 of the Q&A explanatory document compiled by the parties following the signing of the Conductor Only Agreement.

That is the extent of the remedy due because payment of that amount would put the parties in the position they would have been in, had the collective agreement been complied with.

14. Consequently, the order I make is that an assistant Conductor was entitled to be paid for 8 hours of work on April 30 – May 1, 2014, as lost opportunity[6]. If the individual to whom the payment should have been made cannot be identified, it is to be paid to the Union.

15. I remain seized of the implementation.



June 23, 2025

CHRISTOPHER ALBERTYN

ARBITRATOR

[6] See CROA 203.