CANADIAN RAILWAY OFFICE OF ARBITRATION

& DISPUTE RESOLUTION

CASE NO. 4434

Heard in Toronto, January 12, 2016

Concerning

VIA RAIL CANADA INC.

And

TEAMSTERS CANADA RAIL CONFERENCE
(LOCOMOTIVE ENGINEERS)

DISPUTE:

The application of the October 16, 2012 Memorandum of Agreement between the TCRC and Via Rail Canada.

JOINT STATEMENT OF ISSUE:

On June 27th, 2012 the corporation issued a material change notice pursuant to article 25 of the collective agreement advising in part its intention to close the New-Carlisle, NB termination and relocate suspended employees to the Campbellton NB terminal. Following the negotiations to address the adverse effects on locomotive engineers, an agreement was reached on October 16, 2012 which consisted of the reduction of one locomotive engineer and the relocation of the four others to the Campbellton, NB terminal.

Messrs. McCarron and Cormier were two of the four locomotive engineers who transferred to the Campbellton terminal. The agreement provides that they would receive thirty thousand dollars over three years, ten thousand dollars to be paid on November 1st of each year without having to relocate their residence.

The Union contends that from fall of 2013, Messrs. McCarron and Cormier were unable to continue working out of the Campbellton terminal. They received the 2013 payment and they are also entitled to the lump sums for 2014 and 2015.

The Corporation submits that this part of the agreement was created by the parties so that Mr. McCarron and Mr. Cormier did not have to relocate their residences to Campbellton. They were to receive ten thousand dollars per year for up to three years so long as they worked from the Campbellton terminal.

In 2014 Messrs. McCarron and Cormier voluntarily left the Campbellton terminal and chose to move permanently to the Quebec terminal. The Corporation contends that they were no longer entitled to lump sum payments.

FOR THE UNION:
(SGD.) J. M. Halle
General Chairman

FOR THE COMPANY:
(SGD.) E. Houlihan
Director Employee Relations

There appeared on behalf of the Company:

E. Houlihan	– Director Employee Relations, Montreal
G. Sarazin	– Senior Advisor, Employee Relations, Montreal
D. Vernier	– Manager, Operations CMC
L. Mayes	– Senior Manager, CE West, Vancouver
B. Blair	– Labour Relations, Montreal

There appeared on behalf of the Union:

S. Beauchamp	– Counsel, Melançon, Marceau et Sciortino, Montreal
J. M. Halle	– General Chairman, Montreal

AWARD OF THE ARBITRATOR

This matter relates to the interpretation of a Memorandum of Agreement ("MOA") dated October 16, 2012 stemming from the parties' negotiations following the issuance of a Material Change Notice in accordance with Article 25 of the Collective Agreement between them. Part of the material change was the closure of the terminal in New Carlisle resulting in the reduction of one locomotive engineer ("LE") position and the transfer of four other LE positions to the terminal at Campbellton.

It is common ground that to be entitled to relocation expenses pursuant to article 25.8 of the collective agreement employees have to relocate their primary residence. However, the four LEs transferring to Campbellton did not want to relocate there. The parties negotiated the following clause in the MOA:

> The four (4) former New Carlisle employees working at the Campbellton terminal will receive a lump sum payment of $10,000.00 per year to a maximum of three years without having to relocate their residence. It being understood that such payments or ratable amounts thereof, shall apply only so long and to the extent that they work from Campbellton to a maximum of three years. The first payment will be paid out on November 1, 2013.

The departure opportunity for the reduction of the one LE position and the four positions transferred to Campbellton was bulletined with the results awarded on October 22, 2012. Approximately ten months later, on August 22, 2013, as a result of safety problems identified with rail infrastructure, the Company suspended train service between Matapedia and New Carlisle. As service had been suspended between New Carlisle and Gaspe at the end of 2011. This meant that the Chaleur train service was completely suspended. The service has not resumed as of the date of the hearing.

As a result, on September 26, 2013 the junior LE Cormier ("Cormier") working out of Campbellton terminal was laid off. He remained on layoff until the Company recalled him for work as a baggage man for ten days over Christmas in 2013. LE McCarron ("McCarron") was on parental leave at the time and he was scheduled to be laid off upon his return in October 2013. Both Cormier and McCarron had been among the four LE's covered by the MOA, and who were eligible for the annual $10,000 payment.

Both Cormier and McCarron applied to, and were appointed to vacant LE positions in the Québec City terminal. McCarron commenced in Quebec City on October 28, 2013 and Cormier commenced on January 24, 2014.

The Union asserts that Cormier and McCarron are entitled to 10,000 for 2014 and 2015. There is no dispute that they were paid that to which they were entitled for the first year of the MOA, and in McCarron's case, he was paid on a prorated basis for

the ten days worked in December 2013 when recalled to work out of Campbellton over Christmas.

The Union position is that since the MOA was concluded in the Province of Quebec the MOA is a “transaction” to which articles 1425 and 1426 of the Civil Code of Quebec apply. Articles 1425 and 1426 provide as follows:

> 1425. The common intention of the parties rather than adherence to the literal meaning of the words shall be sought in interpreting a contract.
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> 1426. In interpreting a contract, the nature of the contracts, the circumstances in which it was formed, the interpretation which has already been given to it by the parties or which it may have received, and usage, are all taken into account.

The Union further asserts that the true intention of the parties was to provide the LE’s with $30,000.00 as general compensation for the adverse effects created by the loss of their LE positions in New Carlisle. It submits that the very brief response by the Company to the grievance, which sets out its perspective on the reason for the compensation, is inconsistent with the reason provided in its Step 3 response. Also the Company did not refute everything the Union had raised at Step 3. The Union further suggests that the Company’s payment of the first $10,000.00 on or about November 1, 2013 when both Cormier and McCarron had been laid off for only a few weeks prior reveals a common intention of the parties to pay $10,000.00 to the LEs transferred to Campbellton regardless of the amount of time they worked in Campbellton. The Union emphasizes the term “lump sum payment” used by the parties in the MOA.

In the alternative, the Union argues that if the payment of $30,000 is conditional on the LEs working in Campbellton, the Company is precluded from repudiating its obligation pursuant to the MOA to pay the LEs the $10,000.00 in 2014 and 2015 because the Company made it impossible for Cormier and McCarron to work in Campbellton by laying them off after the Chaleur train service was completely suspended. In support of this proposition the Union relies on article 1503 of the Civil Code of Quebec in relation to conditional obligations:

> 1503: A conditional obligation becomes absolute when the debtor whose obligation is subject to the condition prevents it from being fulfilled.

Even if the Civil Code of Quebec does not apply, the Union asserts that at common-law the same notion holds true. That is, because the Company laid off Cormier and McCarron it made it impossible for them to meet the condition of working out of Campbellton. Therefore they were entitled to $30,000.00 as of the date of their lay off.

Finally, the Union asserts that the sequence of the unfolding of events outlined above demonstrates that when concluding the MOA in October 2012, the Company already had plans to lay off the LEs being transferred to Campbellton and therefore the Company concluded and performed the MOA in bad faith.

Decision

The Union’s grievance cannot be sustained. Its interpretation of the MOA is inconsistent with its clear and unambiguous language.

I adopt the Company's comment that the issue raised by the Union regarding the applicability of the Civil Code of Quebec or the common law as opposed to federal law relating to the interpretation of the MOA is properly characterized as "a legal red herring." It is unnecessary for me make any determinations in respect of the Union's submissions on this point and I decline to do so.

As the Arbitrator appointed to hear a dispute about the interpretation of the MOA clause reproduced above, the starting point for my determination must be the language of the MOA – language negotiated by sophisticated parties pursuant to the material change provision of the collective agreement between them. My task is to ascertain the intent of the parties as evidenced by the language of the MOA and give effect to that intent. If on its face, the language is clear and unambiguous, I am required to apply the language.

The clause at issue is straightforward. It could not be more clear on its face except to say that perhaps the word "prorated" might have been preferable, as opposed to the word "ratable" when referring to the payments to be made.

The Union and the Company agreed that the four LEs transferred from New Carlyle to Campbellton would receive $10,000.00 per year to a maximum of three years without having to relocate to Campbellton (which they had indicated they did not want to do and were not required to do). The MOA goes on to specify that the Union and the

Company understood – that is to say they agreed – that the $10,000.00 lump sum payments or ratable amounts thereof due every year commencing November 1, 2013 applied only so long as the LEs worked from Campbellton.

The language negotiated by the parties is not ambiguous as suggested by the Union, nor is it susceptible to an interpretation that would have the LEs receive payments when they do not work from Campbellton, regardless of the reason why they no longer work there. I am not particularly concerned about the parties' respective articulated reasons for why they entered into the MOA language concerning the payments to the four LE's. They may very well continue to have differing views on why they entered into the MOA. The "practice" asserted by the Union, which relates to the first payment made pursuant to the MOA is not a "practice" nor does the use of the term "lump sum payment" in the MOA detract from the clear condition articulated by the parties.

The parties agreed that the Company would make the payments on a prorated basis for up to three years – which in itself suggests that payments could be for less than three years – underscoring the condition to be met by the LEs in order to obtain the maximum entitlement of $30,000.00.

I am unable to agree that somehow a layoff that took place some 11 months after the MOA came into effect, would entitle McCarron and Cormier, who decided on their own initiative to apply for vacant positions in Quebec City to an additional 20,000.00

each for 2014 and 2015. The parties negotiated the MOA against the backdrop of a comprehensive collective agreement that provides for the Company's ability to layoff employees and the corresponding right of employees to be recalled. Rather than accept the layoff and wait to be recalled as was their right under the collective agreement, Cormier and McCarron chose to accept positions in Quebec City. It was their action, not that of the Company, that resulted in their voluntarily leaving Campbellton.

Had the Union wished to negotiate a MOA with a contingency that provided for payments to be made in circumstances other than those set out in the MOA, it was incumbent on it to do so when it entered into the MOA with clear language to that effect. Regardless of the applicability of the Civil Code of Quebec, I find that the intention of the parties is clearly borne out by the language of the MOA.

As for the Union submission that the Company entered into the MOA with the intent to lay off LEs to be transferred to Campbellton before having agreed with the Union to the terms of the MOA, I will not entertain that submission. An allegation of bad faith is a serious one. Nowhere in the Joint Statement of Issue ("JSI") is there any mention of such an allegation. The rules governing the Canadian Railway Office of Arbitration confines my jurisdiction to matters specifically identified in the JSI. This is clearly reflected in paragraph 14 of the Memorandum of Agreement establishing the **CROA and DR**, which reads, in part, as follows:

> 14. The decision of the Arbitrator shall be limited to the disputes or questions contained in the joint statement submitted to him by the parties ….

Even if it were inclined to consider the Union's allegation, the sequence of events, including the Union's reliance on the fact that no notice of material change was issued in connection with the complete suspension of the Chaleur train service (which was not grieved), would not cause me any concern that the Company acted in bad faith.

For all these reasons, the grievance is dismissed.

January 20, 2016

CHRISTINE SCHMIDT
ARBITRATOR