

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**& DISPUTE RESOLUTION**  
**CASE NO. 4479**

Heard in Edmonton, July 13, 2016

Concerning

**CANADIAN NATIONAL RAILWAY**

And

**UNITED STEELWORKERS – LOCAL 2004**

**DISPUTE:**

Claim for travel time while attending training at the CN Campus in Winnipeg, MB, an alleged violation of Articles 2.11 (b), 7.15, 11.10 & 11.11 of Agreement 10.1.

**THE COMPANY'S EXPARTE STATEMENT OF ISSUE:**

Employees required to attending training at the CN Campus in Winnipeg are provided with hotel accommodations if they do not reside locally.

The employees have access to a shuttle bus service that runs between the hotel accommodations and the CN Campus.

The Union contends that the employees should be paid for travel time on the shuttle bus and contends that the Company is in violation of Articles 2.11(b), 7.15, 11.10 & 11.11 of Agreement 10.

The Union requests that the Company compensate all employees who have attended the Training facility since the date of appeal.

The Company disagrees that there has been a violation of Agreement 10.1 and has declined the Union's claim for payment for travel time on the shuttle bus.

**FOR THE UNION:**  
**(SGD.)**

**FOR THE COMPANY:**  
**(SGD.) B. Laidlaw**  
**Manager Labour Relations**

There appeared on behalf of the Company:

B. Laidlaw	– Manager Labour Relations, Winnipeg
T. Smith	– Manager Production, Edmonton
E. Reid	– Senior Engineer Officer, Edmonton
J. Ponto	– Engineer Officer, Edmonton

There appeared on behalf of the Union:

R. Gatzka	– Staff Representative, Burnaby
J. Desjardins	– Chief Steward, Wilkie
M. Piché	– Staff Representative, Toronto

## **AWARD OF THE ARBITRATOR**

The CN Campus is a National training center that opened in Winnipeg in September 2014 to consolidate the Company's training activities into a central location for its employees in Canada. The CN Campus is equipped with full training and administration staff, classrooms, lab facilities, various types of equipment and provides practical hands-on training to both unionized and management employees. The Campus also has a cafeteria that serves meals to the personnel attending training.

Employees attend training from across Canada and are provided with lodging and food in Winnipeg for the duration of their training sessions, if they do not reside locally. Those who fly into Winnipeg are given complimentary shuttle rides between the airport and the accommodations.

CN explains that it provides complimentary shuttle service for trainees from out of town to travel between the hotel and CN Campus. Training classes run from 8:00 a.m. to 5:00 p.m. with a one-hour lunch break and the shuttle ride takes approximately thirty-five to forty minutes. The bus departs the hotel at approximately 07:05 a.m. for the Campus and at the end of the day departs the Campus around 5:05 p.m. back to the hotel.

The Company further adds that trainees are not compelled to use the shuttle service and, if they so desire, they can make their own arrangements to get back and forth to the CN Campus from the Company-provided accommodations.

Thus, it is CN's opinion that by offering the free shuttle service between the facilities and the accommodations, it complies with the Collective Agreement and, as such, should not have to pay for the employees' abovementioned travel time.

In essence, the Union claims that all the time spent travelling between the accommodations or an assembly point and the campus should be paid as traveling time, as per article 2.11 of the Collective Agreements. It sustains that the language of article 7.15 does not forbid such interpretation. Article 7.15 of the Collective Agreement states:

“Expenses and Rate of Pay in Training

7.15 While in training, employees will be paid at the rate of pay they would have received had they not been training and will be allowed actual reasonable away-from-home expenses necessarily incurred. Time spent travelling up to a maximum of ten (10) hours each way, will be paid to employees directed by the Company to attend training at an away-from-home location. Should such training be held at a location which is on another Region, then the employees will receive payment for all time travelling to attend such training. The Company will determine the method of travel and payment will be made at the employees' regular rate of pay.”

Article 7.15 stipulates that an employee in training is paid at his usual rate of pay and will be compensated for reasonable away-from-home expenses. It also provides that time spent travelling for an employee from the Region where the training is given will be paid up to a maximum of ten hours. Such maximum is not applicable for the employee from another Region. In all cases, the Company determines the method of travel and payment will be made at the employee's regular rate of pay.

It is not disputed that this provision covers the time spent travelling from home to the location of training when such location is an away-from-home location. At its face, it clearly does not cover the time spent daily from an accommodation provided by the Company or any other temporary accommodation to the location where the training is given.

The difference in the time compensation, a maximum of ten hours or no maximum depending on the Region of the employee, is consistent with such an interpretation. Indeed, this difference in the compensation would in fact be unfair on a daily basis, since the region from which the employee is would be irrelevant to his daily travels once he arrived at the away-from-home location.

Thus, I share the Company's interpretation that the language of article 7.15 is specifically intended only for situations where employees must travel between their home and the location of training which would be an away-from-home location, and not to the daily shuttle rides.

Consequently, in applying travel provisions in article 7.15, employees from the Prairie Region attending training at CN Campus are permitted to claim up to a maximum of ten (10) hours each way. Conversely, employees from another Region attending training at CN Campus are permitted to claim all time travelling.

The authors Brown & Beatty summarizes how travel allowances are usually tailored:

“Travel allowances are typically tailored to meet the specific circumstances of each work environment. As a result, disputes as to whether a travelling allowance will be paid within the city limits, to employees living outside the city, for the period of time an employee travels from his or her residence to the terminal, as well as whether the employer may require an employee to travel outside normal working hours, generally will also be resolved on the particular language of the agreement rather than upon any overriding principles of arbitration law.”

In such cases where travel allowances are disputed, the language of the agreement constitute the main reference. If the parties had the intention that all travelling time spent daily to attend training would be paid, they would have specified it in article 7 which covers all conditions surrounding training. It is not the case here.

Also, the application of article 2.11 of the Collective Agreement suggested by the Unions appears to be contrary to its purpose, which is to identify the beginning of a work day for employees who traditionally work in gangs, frequently at remote locations and on a seasonal basis, performing scheduled track maintenance projects.<sup>1</sup> Therefore, it cannot be applied to another situation of training that is covered by a specific section which has a unique objective, such as section 7. The same reasoning with, some adaptations, applies to the Union’s arguments based on article 11.00.

To summarize, in the absence of clear and unequivocal language mandating the Company to pay employees for their commuting time, over and above what is usually

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<sup>1</sup> See CROA&DR 3076.

allowed for a basic training day, there are no obligation to do so from the Company. Article 7.15 aims to remunerate workers who have to do extensive travel from one region to another and is not intended to compensate employees' daily travels once they arrived at such an "away-from-home" region.

Lastly, the Union refers to a few cases where the Company did pay traveling time from the shuttle bus to the campus. However, it was demonstrated that the Company paid those inadvertently and when these erroneous payments were discovered, all such payments were immediately halted. Those isolated mistakes do not establish past practice.<sup>2</sup>

For all the above reasons, the grievance is dismissed.

October 14, 2016

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MAUREEN FLYNN  
ARBITRATOR

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<sup>2</sup> See AH576.