

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 4541

Heard in Calgary, February 9, 2017

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Group grievance in response to the Company's systemic denial of the premium payment of \$80.00 for crews who have given proper notice of rest within the first five hours of service, but are not in and off duty in ten hours.

THE UNION'S EXPARTE STATEMENT OF ISSUE:

The release CROA Case No. 4078 (and supplemental decision) recognized that violations of Articles 27 and 29 were occurring and that crews are entitled to claim a premium payment of \$80.00 "regardless of the work they may be required to perform beyond the ten hour limit."

The Union has advanced a series of grievances on behalf of employees based in terminals across Western Canada whose employment is governed by either the Conductors' Agreement or the Locomotive Engineers' Agreement. The Union's grievances contend that the Company is wrongly denying employees' claims for the \$80.00 premium payment in circumstances where violations of Article 29 (CTY) and Article 27 (LE) occur.

It is the Union's view that Articles 29 and 27 provide employees with the right to be off duty at the objective terminal in ten hours when five hours' notice is properly provided to the Company. At locations across Western Canada crews are required to perform further work beyond the ten hour limit, in spite of five hours' notice having been given.

The Union seeks a finding that the Company has breached the Collective Agreement and the Arbitrator's orders in CROA Case No. 4078, seeks an order that the Company cease and desist its ongoing breaches of Articles 29.06 and 27.05 and that the Company be directed to provide the \$80.00 premium payment in all instances of employees working beyond the ten hour limit. The Union seeks a direction that all employees subject to the group grievance be ordered whole and that their \$80.00 claims be paid.

The Company disagrees with the Union's position.

FOR THE UNION:
(SGD.) D. Fulton
GENERAL CHAIRMAN

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

- J. Bairaktaris – Director Labour Relations Policy, Calgary
- B. Sly – Assistant Director Labour Relations, Calgary
- C. Clark – Assistant Director Labour Relations, Calgary
- C. Tsoi – Labour Relations Officer, Calgary

And on behalf of the Union:

- K. Stuebing – Counsel, Caley Wray, Toronto
- D. Fulton – General Chairman CTY West, Calgary
- G. Edwards – General Chairman LE West, Calgary
- D. Edward – Senior Vice General Chairman CTY West, Calgary
- H. Makoski – Senior Vice General Chairman LE West, Winnipeg
- G. Lawrenson – Vice General Chairman LE West, Calgary
- B. Weisgerber – General Secretary CTY West, Calgary

PRELIMINARY OBJECTION DIRECTIVE

The Employer raised a preliminary objection to proceeding with the present case until its current application for a Supplemental Decision on file no. 4078 is determined. The Employer advises that a decision on the 4078 (Supplemental) will be determinative of the issues in this case.

The Union does not agree with the proposal and seeks to press on with a hearing on both the preliminary objection and the merits of the case.

The provisions of Appendix “C” provide the arbitrator with discretion to depart from the guideline that a preliminary objection, filed after a hearing is scheduled, should be heard along with the merits.

Having regard to the circumstances herein, and the material filed, it is apparent to me that both the interests of the parties, and labour relations considerations, are best

served by adjourning the merits aspect of the present case until a decision is arrived at in 4078 (Supplemental).

While the Union has the right to set the cases for CROA hearings, I am advised that with the consent of both parties the 4078 (Supplemental) application can be scheduled for the Montreal hearings in April 2017.

Accordingly, the preliminary objection is granted and a hearing on the merits of this matter will be adjourned to a date following a decision in CROA 4078 (Supplemental)

I will remain seized with jurisdiction on the present file and am prepared to accommodate the parties with a hearing - as soon as possible after the April 2017 CROA hearings - to address the merits of this case.

February 28, 2017



RICHARD J. HORNUNG
ARBITRATOR