

**CANADIAN RAILWAY OFFICE OF ARBITRATION**  
**& DISPUTE RESOLUTION**  
**CASE NO. 4562**

Heard in Edmonton, June 15, 2017

Concerning

**CANADIAN PACIFIC RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Grievance advanced by the Union in response to the Company incorrectly calling crews out of Mactier to fill assignments in Sudbury.

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

The Company on or about September 17, 2015 started calling employees in combination service from Mactier to work adhoc vacancies at Sudbury. A grievance was filed by the Union's Local Chairman at Mactier on October 10, 2015 which was not responded to by the Company.

The Union further progressed this grievance at Step 3 on January 11, 2016 in accordance with the Collective Agreement. Once again no response was received from the Company.

The Union submits that the Company changed how they called Mactier employees to protect assignments in Sudbury without consultation or warning to the Union. Prior to this, employees were called in straightaway service and now in combination service.

Article 19.05 states "assignments must be bulletined specifying the home terminal, initial and objective terminals for each trip".

Article 24.01 states "or Trainperson deadheaded to the terminal of a regular assignment or to the point at which a work train is laid up to relieve on that assignment or work train will not be regarded as in combination service and will be paid not less than a minimum day."

Article 24.06 states "Trainpersons required by the Company to deadhead to an intermediate point and then going from such point to a terminal in either straightaway or turn service or going into work train service for the balance of the day, or vice versa, will be paid for the combination deadheading and working service as follows: When deadheading precedes working service the deadheading payment will be continuous from time ordered for until working service actually begins; when deadheading follows working service, payment for working service will continue until deadheading commences. When deadheading and working service is combined in a continuous tour of duty, not less than a minimum day at the highest rate applicable in the combination will be allowed. For deadheading other than between terminals and when combination service is not performed the compensation for such deadheading shall not be less than a minimum day."

It is clear to the Union that the Company must call employees as above and a minimum day's payment for the dead head takes place. Sudbury is and has been a home terminal for Road Switchers and Yard Assignments which as per bulletin these Assignments specify the home terminal, territory in which the assignment is to perform service and days of operation.

Therefore, as noted above the Company actions are in violation of the Collective Agreement Articles noted above. In the alternative, the Company is estopped from making this change.

The Union requests that; The Company be found to have violated the Collective Agreement as alleged; the Company be ordered to cease and desist from said violations; the Company be ordered to comply with the Collective Agreement; the Company compensate employees in question for any and all losses suffered as a result of these violations including any/all other claims past and in the future associated to the subject matter of this appeal; and such other relief as the Union may request.

The Company disagrees and denies the Unions requests.

**FOR THE UNION:**  
**(SGD.) W. Apsey**  
**General Chairperson**

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

There appeared on behalf of the Company:

C. Clark	– Assistant Director, Labour Relations, Calgary
D. Pezzaniti	– Manager, Labour Relations, Calgary
D. Purdon	– Assistant Superintendent, Toronto

There appeared on behalf of the Union:

D. Ellickson	– Counsel, Caley Wray, Toronto
W. Apsey	– General Chairman, Smiths Falls
G. Edwards	– General Chairman, Calgary
H. Makoski	– Vice General Chairman, Winnipeg

### **AWARD OF THE ARBITRATOR**

All workplaces experience unexpected absences when employees, for good reason or bad, take time off work. In Sudbury, for CP's yard crews, such *ad hoc* vacancies in the schedule would normally be filled by calling in employees from the Sudbury spareboard. However, the complement of two employees in Sudbury is too small to fill all such vacancies. The next best alternative is to commandeer employees from the terminal at Mactier. Sudbury is, at least, an "outpost" of the Mactier terminal. This entitles the employer to require an employee from Mactier to cover a posted

vacancy in Sudbury. It has no similar ability to commandeer an employee from a terminal to which Sudbury is not an outpost.

There is no dispute about the Employer's right to order in coverage from Sudbury from Mactier; they have been doing so for many years. The dispute is that, as of September 17, 2015 they began doing so on a different basis which changed the conditions under which such employees worked. Under the former approach, an employee would receive 100 miles compensation for travelling to Mactier, then once they arrived they would have the option of booking off for an eight hour rest break. Under the newly introduced approach, the employee would not receive the 100 miles compensation on the way up, but would be on pay from when they left Mactier, and could be assigned to work without any eight hour break once they arrived.

This difference in process is described as calling out the employees in "combination service" versus calling them out in "straightaway service".

Sudbury falls outside the Mactier Terminal limits. It is about 130 miles away and requires a "deadhead" trip of about 2 ½ hours. I agree with the Employer that it is not the distance that is relevant. The employees called in from the Mactier spareboard to go to Sudbury have no option but to go or face discipline.

Article 24 of the agreement is entitled "Road Service – Deadheading" and contains three pages on the topic. The provisions raised by this grievance appear

under the title “Straightaway Deadheading and Combination Deadheading” and read, in part:

24.01 A spare Locomotive Engineer and/or Trainperson deadheaded to the terminal of a regular assignment or to the point at which a work train is laid up to relieve on that assignment or work train will not be regarded as in combination service and will be paid not less than a minimum day. (*emphasis added*)

Article 19.05(1) describes how assignments must be bulletined.

Assignments, ... will be bulletined specifying the home terminal, initial and objective terminals for each trip, territory over which the assignment is to perform service, starting time and days of operation. So far as it is practicable, assignments will start at the bulletined starting time, except that on any day, an assignment may be started up to five hours beyond the bulletined starting time, but not earlier than that specified in the bulletin, unless otherwise mutually agreed. Should an assignment not be called within five hours of its' bulletined starting time, the assigned crew shall be cancelled. When the bulletined starting time is changed more than three hours, the assignment will be re-bulletined.

The Union's position is that Sudbury is and has continuously been the “home terminal” for Road Switchers and Yard Assignments. Article 24.01 does not, in the Union's submission and for these purposes, differentiate between an outpost terminal and any other form of terminal. It introduced the “Spring 2017 TCRC-C General Advertisement of Assignments” which included, under the heading “Sudbury Assigned Services”, 4 yard and 3 road switcher assignments.

The Union contrasts sub-article 24.01, with the first sub-article under the next heading:

**Combination**

24.06 Locomotive Engineers and Trainpersons required by the Company to deadhead to an intermediate point and then going from such point to a terminal in either straightaway or turn service or going into work train service for the balance of the day, or vice versa, will be paid for the combination deadheading and working service as follows:

When deadheading precedes working service the deadheading payment will be continuous from time ordered for until working service actually begins; when deadheading follows working service, payment for working service will continue until deadheading commences. When deadheading and working service is combined in a continuous tour of duty, not less than a minimum day at the highest rate applicable in the combination will be allowed. For deadheading other than between terminals and when combination service is not performed the compensation for such deadheading shall not be less than a minimum day.

The Union maintains Article 24.06 does not apply here because no intermediate point is involved.

The Employer asserts that Sudbury is not a “home terminal”. It argues that there is a clear difference between a “home terminal” and an “outpost location”. It says also that the following categorizations are important:

Sudbury is an outpost reporting location only for Conductors of Mactier, ON. Mactier is a Home Terminal for Conductors and is also a Home Terminal for Locomotive Engineers. It is important to note, that Sudbury is not an outpost location for Locomotive Engineers.

Sudbury is neither an Away from Home Terminal for Conductors or Locomotive Engineers home terminalled in Mactier. All assignments at Sudbury begin and end at Sudbury.

Throughout, the Employer's argument uses the terms "outpost" or "outpost location", leaving the implication that they are not terminals within the meaning of Article 24.01. Article 24.01 only uses the word terminal, and then in the phrase "the terminal of a regular assignment". The significance of Sudbury being an outpost of Mactier is that it allows the Employer to force junior employees to Sudbury to cover a Sudbury assignment.

It is not disputed that the practice, altered in September 2015, had been followed for many years. This alone supports the Union interpretation (See Arbitrator Stout's decision of January 21, 2017, concerning whether Delson is part of the Montreal Terminal).

The Employer is frank about the reason for this unilateral change.

26. To be clear, employees are called for duty and are on pay while being transported to Sudbury. On arrival in Sudbury, they work the assignment they were sent to cover. At all times the employees are on pay. Moreover, the time the employee travels from Mactier to Sudbury forms part of their tour of duty.

27. Upon completion of their tour of duty, the Employee is deadheaded home – to their home terminal, and paid a deadhead. The employee suffers no loss.

28. Simply put, the Company loses approximately 2-2.5 hours of productivity on the assignment the employee is sent to cover an ad hoc vacancy. While the Union contends that all employees be compensated for their losses, it is the Company in fact who incurs a loss when covering the assignment in this manner.

However, even an obvious economic advantage cannot write down clear contractual language. The Employer says its new approach, treating these employees as on combination service, is authorized by Article 24.06 and 59 of the Collective Agreement.

Article 24.06 deals with persons required to deadhead to an intermediate point. That is not the situation here. The second paragraph, absent its position in 24.06, does suggest the Employer can do what it is currently doing, but its location, in 24.06 and under the heading "Combination" persuades me that it does not cover spare employees falling within 24.01. The same applies to the argument under 59.01. It addresses one form of combined service, and 24.01 specifically excludes that possibility. It is a case where the specific provision in 24.01 must be interpreted to provide an exception to those more general rules, because s. 24.01 expressly says so.

The Employer argues that there are no provisions in the agreement prohibiting an employee being called in to fill a vacancy at an outpost location. However, 24.01's "will not be regarded as in combination service" exception is not based on "outpost location" but on it being the "terminal of a regular assignment", which it is.

**CROA&DR 3207**, which confirms that Sudbury is an outpost terminal of Mactier is little assistance since that proposition is not in dispute. The existing specific agreement from Windsor as an outpost of London is similarly of little assistance. There

is no similar agreement here, and coming to a compromise agreement in one situation does not assist in interpreting the agreement more generally.

**CROA&DR 2031** interprets the old 22(b), which read “required by the Company to deadhead to an intermediate point ...”. This case does not involve “an intermediate point” in either side’s position.

The Union’s position relies on Article 24.01 which speaks of being deadheaded to “the terminal of a regular assignment”. Article 19.05(1) specifies how assignments will be bulletined. They must specify the “home terminal”. The March 20, 2017 assignments put into evidence, support the Union’s position that the regular assignments in question here (the ones when vacant that are being mandatorily filled by the junior employees from Mactier) are Sudbury assignments. Article 24.01 says the employees deadheaded up to Sudbury in this way “will not be regarded as in combination service”. This is in contrast to such persons required to deadhead to an intermediate point.

Nothing brings the question of whether Sudbury is an outpost terminal or a terminal into Article 24.01. The assignment being force filed, by the Company’s own bulletin is, assuming as I must in the absence of any contrary evidence, the specified “terminal of the regular assignment”.

Article 24.01 creates a specific exception to what might otherwise apply.

The Employer cautions that CROA cannot amend or alter the provisions of the collective agreement (See **CROA&DR 2590** and **CROA&DR 4078-S**). That is indisputable law, but equally interpreting the agreement, based on the language the parties have used and other relevant considerations, does not, of itself, constitute an amendment merely because one party disagrees with the result.

For these reasons, the grievance succeeds. It is declared that the Company has violated the collective agreement Article 24.01 by this change in practice. The Company is directed to cease and desist such violation in future and to compensate all crews who have been or are required to deadhead to Sudbury since September 2015 without being provided any minimum day's payment required by Article 24.01. Jurisdiction is reserved to quantify and otherwise finalize any remedial order as necessary, including any need to establish an abeyance code.

August 10, 2017



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ANDREW C. L. SIMS  
ARBITRATOR