

CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 4614

Heard in Edmonton, March 13, 2018

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNIFOR NATIONAL COUNCIL 4000

DISPUTE:

The Company issued a Local Notice in Grande Cache, and Grande Prairie, Alberta date June 11th, 2017 advising that the Spareboard Guarantee would be reduced from the Conductor rate of pay to the Assistant Conductor rate of pay effective immediately.

JOINT STATEMENT OF ISSUE:

The Union contends that the Company is in violation of Articles 16.01, 21.03, 21.04 and 21.08 of the CN / Savage Alberta Railway Collective Agreement and the long standing practice of the Conductor spareboard guarantee being paid at the Conductor rate of pay. The Union further contends that the Company is estopped from making these changes during the life of the collective agreement.

The Company disagrees with the Union's allegations and denies any violation of the collective agreement.

FOR THE UNION:
(SGD.) B. Kennedy
National Representative

FOR THE COMPANY:
(SGD.) D. S. Fisher
Senior Director Labour Relations

There appeared on behalf of the Company:

R. Campbell	– Manager Labour Relations, Winnipeg
S. Blackmore	– Senior Manager, Labour Relations, Edmonton

There appeared on behalf of the Union:

B. Kennedy	– National Representative, Edmonton
R. Shore	– Regional Representative, Langley
D. Judge	– President, Local 4001, Grande Prairie
D. Kissack	– President Council 4000, Winnipeg
A. Stephen	– Regional Representative, Toronto
J. Murray	– Regional Representative, Moncton
A. Kerkhof	– Grievance Officer, Grande Prairie

AWARD OF THE ARBITRATOR

Unifor represents around 60 employees who work for CN on what used to be the Northern Alberta Railway (among other names) running from the CN main line into Grande Cache and Grande Prairie, Alberta. The agreement covers running trades employees who are paid one of three rates; as Locomotive Engineers, Conductors and Assistant Conductors. Unlike employees working on CN's main line, the employees are paid an hourly rate for their work rather than mileage, which is said to improve their life/work balance.

This grievance arose when, on June 1, 2017 CN posted the following notice:

Subject Brakeman v. Conductor Spareboard

Effective immediately, the guarantee on the joint spareboard will be changed to the Brakeman rate.

Employees must only claim for the classification they have been called for off the spareboard.

When spareboard employees are called to work as brakeman, tickets must be filed at the brakeman rate and not changed to the Conductor rate.

The Union grieves that this change in what it views as the established practice is contrary to the language of the collective agreement, on its face, or as interpreted in light of past practice. If not, it argues, the Employer is in any event estopped for changing this practice until the Union's next opportunity to bargain protective language. The Union views the change as inappropriate effort to impose main line practices and terminology on the historically different former NAR operations.

The Employer, in contrast, maintains that it discovered that its payment practices were inconsistent, but often involved mistakenly paying the Conductor's rate when it is not obliged by the collective agreement to do so under the guarantee of 40 hours pay in Article 21.08.

The Employer's basic position, aside from the past practice and estoppel arguments, is that Article 21.08, which reads:

21.08 While assigned to the spareboard, employees will be guaranteed wages of forty (40) hours for each spareboard work week.

does not obligate it to pay employees at the Conductor's rate, only the Assistant Conductor's rate, which is \$4.72 an hour lower. The Union alleges to do so breaches Article 16.01 which establishes the employees' hourly rate of pay. The collective agreement provisions relevant to this argument include:

Article 1 – definitions:

1.04 For the purposes of this agreement, a "basic day" means eight (8) hours pay at the employee's regular rate of pay unless otherwise specified.
(*emphasis added*)

The phrase "an employee's regular rate of pay" must have some meaning, and it or similar terms are used in other provisions in the agreement, such as the following:

4.01 Seniority under this collective agreement shall commence from the moment employees commence employment under the classification of Locomotive Engineer, Conductor, or Assistant Conductor with the Company at the earliest hour, and their names will be placed on the Seniority Roster in this order within the Transportation

group. For the purposes of establishing seniority, time spent in training will be considered as time worked.

Note: See Appendix A

I note that Appendix A, subject to a transition, moves to a single seniority list.

4.16 Seniority lists will show the seniority number and name of the employee, including their seniority date, respective classification, home station and service date. Seniority lists will be posted at the headquarter locations of all employees concerned.

Article 4.16 suggests each employee on the seniority list has “a classification”.

8.07 Employees will be compensated for overtime hours in the pay period in which the overtime occurs unless the employee chooses to bank the overtime hours worked, in which case the employee may receive the overtime pay or time off with pay at a later date as locally arranged. Overtime pay is payable at one and one-half times an employee’s regular rate while time off in lieu of overtime will be taken at the employee’s regular rate of pay. (*emphasis added*)

Article 12.03 refers to “regular wages”.

12.03 It is the intent of this Article to provide for the granting of leave from work on the occasion of a death as aforesaid and for the payment of the employee’s regular wages for that period for which leave is granted. (*emphasis added*)

Article 16 provides:

Rate of Pay and Payment of Wages

16.01 Compensation Schedule:

a) Rates per Hour:

[The rates over four years are then set out, and currently provide]

Locomotive Engineer \$45.23

Conductor \$42.74
Assistant Conductor \$38.02

b) All new employees hired after the date of ratification will be compensated at the hourly rate of pay shown in Article 16.01(a) for which applicable classification they are being trained for and will be compensated as follows:

Employees will be compensated at 85% of the hourly rate of pay for the classification they occupy during the first six (6) months of service. Thereafter, the employee's rate of pay will increase by increments of 5% each successive six (6) month period until such time as the employees reach 100% of the applicable hourly rate of pay.

16.02 All employees shall receive wages in accordance with the applicable hourly rates of pay as specified in Article 16.01.

...

16.08 Employees temporarily assigned to higher rated positions shall receive the higher rate of pay while occupying such positions. Employees temporarily assigned to lower rated positions shall not have their rates reduced.

The collective agreement provisions governing the spareboard, in relevant part, provide:

21.01 Spareboards will be utilized to perform all relief and extra work of eight hours duration or more. Note: see Appendix K

21.02 Employees who bid the spareboard assignment must be qualified to perform the work of all the classifications protected by that spareboard.

21.03 Spareboard employees will be paid for all time worked at the rate of the classification in which the work is performed.

...

21.07 Spareboard employees will be entitled to overtime only upon accumulating forty (40) hours at straight time rates during their spareboard work week.

21.08 While assigned to the spareboard, employees will be guaranteed wages of forty (40) hours for each spareboard work week.

21.09 In cases where the employee is assigned to the spareboard for only a portion of the guarantee period, the guarantee will be prorated based on the number of days so assigned.

Each four months there is a "Change of Card" that allows employees to change their assignments. The regular assignments are all bulletined as either Locomotive Engineer or Conductor assignments. As the railway usually only runs two person crews, there have been no Assistant Conductor regular positions bulletined.

The two home stations, Grande Prairie and Grande Cache, each maintain spareboards, one for Locomotive Engineer and the other for depending on one's point of view, Conductors, or Conductors and Assistant Conductors (sometimes called Brakeman using old, or main line terminology).

This grievance concerns the pay rate to be applied for persons on the Conductor's spareboard for those hours when they are guaranteed 40 hours pay, but have worked less than 40 hours during the week.

There is no dispute that, when employees on the spareboard have been called to work as Conductors they receive the Conductor's rate. Similarly, when they are called to

work as Assistant Conductors, they are normally paid the Assistant Conductor's rate for the hours worked.

The large majority of calls off the spareboard are to backfill vacation, sick days, and so on for regular Conductors. However, the Company, if it feels a three person crew is needed, will call in persons to act as Assistant Conductors. The Union has encouraged this practice, but it amounts only to about 5% of the calls off the spareboard.

The starting point in analyzing this issue is appropriately Article 16.01 which establishes the rates of pay by classification. Article 16.01(b) and 16.02 imply strongly that an employee is hired into a particular classification, not at a floating rate dependent at all times on the work they are assigned to do. Article 1.04 uses the phrase "at the employee's regular rate of pay". Article 4.01, 4.16, 8.07 and 12.03 all support the view that each employee is employed in a set classification and is *prima facie* entitled to the rate of pay associated with that classification.

The Employer could hire Assistant Conductors, but it has chosen not to do so. The Company could establish an Assistant Conductor spareboard, but has no available Assistant Conductors with which to populate such a spareboard, if created.

The Employer's strongest argument for paying all spareboard employee's receiving a guarantee at Assistant Conductor rates is that it is certainly anomalous that the employee called in to work as an Assistant Conductor should make 10% less than

that same employee sitting at home collecting the guarantee. That however is what Article 21.03 says. The fact that this is somewhat anomalous does not however, force one to the conclusion that a Conductor, whose regular rate is the Conductor's rate, is thereby reduced down to the Assistant Conductor rate for the purposes of the guarantee. I find that Article 21.08 entitles the employee to a guarantee of 40 hours at their regular rate of pay, which is the rate of pay for their classification (here actually Conductors, but potentially, should they be hired as such, Assistant Conductors).

I find nothing in the past practice that alters this interpretation. The past practice is in any event uneven. It is unnecessary to resort to estoppel since I find the Union's position is the correct interpretation of the collective agreement.

The grievance is allowed. I remain seized of any remedial aspects that cannot be resolved between the parties.

March 29, 2018



ANDREW C.L. SIMS, Q.C.
ARBITRATOR