CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 4678

Heard in Montreal, April 10, 2019

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Claim for terminal detention pay at the final terminal when employees are provided transportation from one yard to another yard within the Prince George Terminal to their personal vehicles.

THE COMPANY'S EXPARTE STATEMENT OF ISSUE:

In July 2013, the Company issued a CATS Broadcast Message and a General Notice reminding employees of the requirements to tie up and go off duty at their final objective yard (or bunkhouse) where a CATS terminal is provided. If the employee's personal vehicle was located at a different yard than where the employee registered off duty, the employee would be provided transportation (Company vehicle or taxi), to their personal vehicle.

In April 2014, the Company conducted an audit and found that in some instances Prince George employees continued to include travel time to their personal vehicle contrary to both the CATS message and the General Notice.

The Union's position is that employees must be compensated for time they are being transported to their personal vehicle; in addition, the Union maintains that employees have the collective agreement right to register off duty at the same yard where they commenced their trip.

The Company's position is that Collective Agreement 4.3 does not provide for compensation in such circumstances nor does the Collective agreement mandate employees must go off duty at the same yard the employee started their trip.

THE UNION'S EXPARTE STATEMENT OF ISSUE:

Traditionally, the starting location for Conductors and Trainmen of Prince George Terminal has been the booking in room at CN Yard, now known as Prince George North Yard. The North Yard was also the traditional tie up point for Prince George Conductors and Trainmen. Following the amalgamation of the BCR into the CNR, Train crews could be required to start at either the North Yard or at the former BCR Yard, or South Yard, and frequently yarded their trains upon return to Prince George at the yard they did not commence their trip at. Consistently, for 9 years the crews were dead headed by taxi to the point from which they started their trip where they tied

up and went off duty and were paid on a minute basis from the time they arrived at the outer switch until they went off duty.

In July 2013, the Company issued two bulletins that required Crews arriving in Prince George to tie up their ticket and go off duty at the nearest CATS location to where they yarded their train. The Company only applied these bulletins to crews whose home terminal was not Prince George. Prince George crews continued to be dead headed to the yard they commenced their trip upon arrival in Prince George.

On 04 April 2014, the Company changed the existing practice of dead heading Prince George home based crews to the yard they originated their trip at. Prince George home based crews were being required to go off duty at the yard they delivered their train to and then they were required to dead head to the yard they originated their trip with a significant loss of earnings for the time spent taxiing to the other yard.

The Union's position is the Company's change to the long standing existing practice of dead heading the Crews to their original starting location violates Article 24 and Addendum 36 of the 4.3 Agreement, the applicable Canada Labour Code provisions. It is the Union's position the Company's change to the application of their own operating policy makes the aforementioned July 2013 Bulletins no longer in compliance of the KVP standards.

The Union requests that the Company reinstate the long standing practice of dead heading crews to the location they commenced their trip in order for them to tie up and go off duty. The Union requests the Company make whole all members who have been adversely affected by being required to dead head to their longstanding tie up point after they were had gone off duty at other than their original start location.

FOR THE UNION:	**FOR THE COMPANY:**
(SGD.) R. Donegan	**(SGD.) D. Crossan** (for) **K. Madigan**
General Chairperson	VP Human Resources

There appeared on behalf of the Company:

D. Crossan	– Manager, Labour Relations, Prince George
M. Boyer	– Senior Manager, Labour Relations, Montreal
P. Payne	– Manager, Labour Relations, Edmonton
J. Torchia	– Director, Labour Relations, Edmonton
N. Hart	– General Superintendent, Edmonton
V. Paquet	– Manager, Labour Relations, Toronto

And on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
R. Donegan	– General Chairman, Saskatoon
R. Hackl	– Transition Vice President, Saskatoon
M. King	– Vice General Chairperson, Edmonton
K. C. James	– General Chairperson, Edmonton

AWARD OF THE ARBITRATOR

In 2004, the Company ("CN") purchased the British Columbia Railway ("BCR") from the Province of British Columbia. The BCR system was separate from CN's with

interchange points in Vancouver, Dawson Creek and Prince George. The CN yard office, located north of the Fraser River in Prince George, was referred to as the “North Yard Office” while the BCR yard office, located south of the Fraser River, was referred to as the “South Yard Office” after the purchase of BCR by CN. The two yards are on separate subdivisions and are governed by separate collective agreements. Former BCR employees typically work under the BCR collective agreement while CN employees work under the CN 4.3 collective agreement.

In February 2006, as a result of changes to the yard-to-yard agreements, CN permitted trains that would otherwise have stopped at the South Yard to be directed through on to the North Yard, where they were secured. The crew would then taxi back to the South Yard, which was their original reporting location, where they would perform the necessary reporting in the CATS system, book rest and return home. Similarly, crews whose original reporting location was the North Yard and were required to take their trains back to the South Yard would follow a similar check-out routine once they were transported back to the North Yard. The Union points out that this practice continued for almost nine years; that is, the crews would be returned to the location that they originally reported for duty (where typically their lockers, street clothes and vehicles were located) and book off in the CATS system at that location. They were compensated for terminal time for this entire period.

The Union maintains that all terminal time is compensable from the time a conductor goes on duty to the point in time they subsequently register off duty. Rest can

only begin when all duties have been completed, including being returned to the location where they reported for duty and registered off duty. This is the common sense interpretation of article 24 and further reflects the intent of the parties as situated in the context of the entire collective agreement. The Union submits that the Company is otherwise forcing crews off duty before they actually transfer to their original reporting location. This reduces rest time and essentially, in the Union's view, amounts to free work from the membership.

The Union also notes that the Company attempted to alter the original stated intent of the July 13, 2016 Bulletin by saying that the original Bulletin was not limited to AFHT crews at Prince George but also applied to home-based Prince George crews. The Union notes in that regard that the Company later began to enforce the July 13, 2016 Bulletin differently by investigating Prince George Home Terminal employees who did not report off duty at the location where their train was secured but rather at the location where they originally reported for duty. The Union argues that this was a departure from the well-established operating practice which had been in effect for many decades, and is still in effect in other multi-yard terminals such as in Winnipeg and Edmonton.

In the alternative, the Union submits that the Company's action of paying the conductor until they reach the yard where they reported for duty, as opposed to the yard they delivered their train, is a long-standing practice. The past practices and representations of the Company over this extended period, and the Union's detrimental reliance on the Company's representations, estops the Company from altering the

practice in question. The Union also alleges a breach of Addendum 36 that states "questions of interpretation" required consultation with the appropriate General Chairman, which did not occur in this case.

The Company notes at the outset that the Prince George Terminal encompasses three separate areas with different yard designations: Bridge Yard, North Yard and South Yard. There are constant train movements that originate, terminate and operate between these through areas within the Prince George Terminal.

The Company maintains there has been no violation of Article 24 or Addendum 36 of collective agreement 4.3. The Company points out in that regard that conductors are paid on a minute-by-minute basis, pursuant to article 24.3, from the time the engine passes the outer switch until the conductor registers off-duty. Article 24.4 reinforces that the outer switch is the "switch normally used in heading into the yard." The Company notes that the Union is unable to point to any provision in the collective agreement that states crews must be permitted to go off duty at the same location where they started their trip.

The Company submits that the collective agreement is clear that employees in road service may go on and off duty at different locations within a terminal. It does not provide payment for transportation via taxi to their personal vehicle. In addition, where the intention has been to pay for time traveling from one point to another within a yard, the

parties have agreed to specific language for such a monetary entitlement (See Addendum 4 of collective agreement 4.3). See **CROA 2665**.

The Company also submits that it was the audit of July 2013 which revealed that employees were improperly submitting claims for travel time between yards and maintains there is no provision in the collective agreement for such payments. The CATS Broadcast Message was issued on July 4, 2013 followed by the General Notice bulletin issued on July 13, 2013 which reads in part:

> Further to CATS Broadcast Message # 184928 issued July 4, 2013. Employees are expected to tie up at the final terminal **(Yard office or Bunkhouse)** where a CATS terminal is provided. The only exception that will be tolerated is when you have advised otherwise.
>
> Employees arriving at the following locations are to tie up at the **Yard Office** located at that location:
>
> - Prince George South Yard
> - Prince George North Yard
> - *(other locations listed in BC and Alberta)*

The above Notice, the Company points out, was issued to employees working in terminals across western Canada following the CATS broadcast on July 4, 2013. The Notice applied to <u>all</u> employees, both those arriving at their home terminal and those arriving at the away from home terminal. It was not targeted, as the Union claims, to only the AFHT crews but also applied to Prince George Home Terminal employees. The follow up audit for rest overruns claims in April 2014 revealed that employees in road service were still including travel time within the terminal of Prince George, contrary to the terms of the collective agreement and the Notice of July 13, 2013. The Company maintains these claims were improper and, as a result, employee investigations were conducted for alleged non-compliance with the General Notice of July 13, 2013.

The Company also disagrees with the Union that it violated Addendum 36. The Company was at all times exercising its management rights. This was not a new policy, but rather a communication to employees clarifying that they were not entitled to claim terminal time after their train has been yarded.

The Company also maintains that the actions of the Company do not give rise to an estoppel through past practice or otherwise.

The arbitrator observes that the history of this case is important. In 2004, CN purchased BC Rail. There are two separate districts in Prince George: District 22 which covers the territory on which CN crews operate exclusively and District 25, the district covering the former BCR territory, on which crews from the former BCR territory operate under a separate collective agreement. Before June 2005, CN crews did not report for duty or operate on the former BCR territory.

Over the course of time, from June 2005 onward, the number of trains operating from the former BCR South Yard by CN crews assigned to District 22 increased. CN crews on duty at either the South Yard or North Yard were therefore required to park their train at the opposite yard from their original yard where they reported for duty. The undisputed evidence is that for nine years, the Company paid “final terminal” time under article 24 until the CN crew was transported to the location where they had reported on the outgoing tour of duty and registered off duty. It was not until the July 13, 2013 General

Notice was issued that the practice ceased of paying travel time to CN crews from the yard where the train was parked to the yard where the crew began their tour of duty.

I disagree with the Union's interpretation that a reading of article 24.3 can only be reasonably interpreted to mean the terminal from which the employee departed; that is where they start and end their day. The word "terminal" does not in the context of article 24 preclude a finding that it includes the BCR South Yard simply because the BCR South Yard was once treated as a distinct territory. The qualifying word "final" (i.e. "final terminal") also does not lead to the conclusion that it refers to the yard point where the tour began. That a terminal can contain one or more "yards" is not unusual and occurs in a number of major centres in Western Canada, including Edmonton and Winnipeg. The Company's position is that article 24 is not ambiguous because it states that the conductor is required to register off duty after passing the outer switch heading into the yard.

In my view, the word "final terminal" is capable of more than one interpretation in the context of the two Prince George yards and for that reason creates an ambiguity. In order to resolve the ambiguity, the principles of interpretation permit a review of past practice in order to determine whether there is an evidentiary foundation for an estoppel.

I note the comments of Arbitrator Picher in *CN v. Teamsters Canada Rail Conference* (2010) 196 L.A.C. (4th) 207 where he discusses at paragraph 36 the principle of estoppel in a case involving an allegation by the Union that the Company wrongfully utilized the material change provisions of the collective agreement to effectively compel

employees to work outside the scope of the territories governed by their collective agreements. In upholding the grievance, he comments as follows on the application of the doctrine of estoppel:

> If I am incorrect in my interpretation of these collective agreements and the limitations of the Company's prerogative with respect to implementing a material change with trans-territorial consequences, I would also be inclined to accept the Unions' submission with respect to the operation of the doctrine of estoppel…More significantly, notwithstanding that it has implemented many changes system wide for decades, the Company has never previously asserted that it can assign employees from Eastern Lines to work on Western Lines or vice versa. At a minimum, its actions and practice over many years must, I think, be taken as a representation by conduct that even if the material change provisions of the collective agreements can be properly interpreted as allowing trans-territorial assignment, it has effectively represented to the Union that it would not make any such assignment, whether in the implementation of extended runs or otherwise.

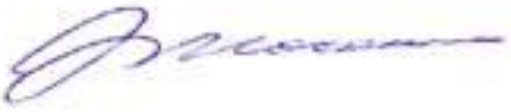
For years, employees in this case remained on duty while accessing Company appointed transportation and then went off duty at the location where they originally started their outbound tour. As the Union pointed out in their grievance dated May 25, 2014: "This arrangement continued without dispute for over eight years". I also note Mr. Meaney's comment in his investigation at Q/A 13 where he states in response to a question about his knowledge of the General Notice of July 13, 2013: *"I've worked at the railway for over 30 years and always tied up where I went on duty".*

Similar to the facts in the case cited above, even if the Company is correct that the collective agreement does not say that crews must be permitted to go off duty at the same location where they started their trip, that is effectively what the Company has represented to the Union since 2005. The Company through its conduct beginning with the purchase of BC Rail has accepted that employees are to be paid through to the point

where they first reported for duty. The Union has relied on that conduct and continued to submit claims for time required to reach the location in the yard where they started their trip. It does in my view make some sense for the Employer to have accepted these claims for transportation time over the years given that these are the yard points where the employees parked their cars and then used their assigned lockers from that location to change into their work clothes.

The grievance is upheld. The Company is estopped from not paying terminal time for the time it takes to transport employees to the location where they reported on the outgoing tour of duty and registered off duty until such time as the parties return to the bargaining table to renew the current collective agreement.

I will reserve jurisdiction should any matter arise with respect to the implementation of this award.



May 1, 2019

JOHN M. MOREAU, Q.C.
ARBITRATOR