

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

CASE NO. 4719

Heard in Montreal, January 14, 2020

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The applicable rate of pay for K. Essar for work performed as part of the accommodation process.

THE JOINT STATEMENT OF ISSUE:

The Grievor was injured at work on March 17, 2014 and was temporarily unable to work in her role as Conductor. As part of the accommodation process, the Grievor was offered work as an Assistant Traffic Coordinator which has an established rate of pay per Agreement 4.2.

The Union's position is that the Grievor was entitled to payment in accordance with Article 150 of Agreement 4.3, with a daily rate of pay based on her earnings in the 30-day period prior to the injury.

The Company's position is that modified duties as contemplated by Article 150 involve a situation that allows an employee the opportunity to continue working in their own classification, albeit in a modified capacity. If, however, the employee is unable to perform the work associated with their own classification, even in a modified capacity, and is instead offered a role with an established rate of pay, then that established rate of pay applies.

FOR THE UNION:

(SGD.) R. S. Donegan

General Chairperson

FOR THE COMPANY:

(SGD.) D. Klein

Senior VP Human Resources

There appeared on behalf of the Company:

- | | |
|----------------|---|
| V. Paquet | – Manager, Labour Relations, Toronto |
| S. Blackmore | – Senior Manager Labour Relations, Edmonton |
| S. P. Paquette | – Director, Dispute Resolution and Labour Standards, Montreal |
| F. Daignault | – Manager, Labour Relations, Montreal |
| L. Paulicelli | – Human Resources, Business Partner, Winnipeg |
| W. Glass | – Senior Engine Service Officer, Toronto |

And on behalf of the Union:

- | | |
|-----------------|------------------------------------|
| K. Stuebing | – Counsel, Caley Wray, Toronto |
| J. Thorbjornsen | – Vice General Chairman, Saskatoon |

AWARD OF THE ARBITRATOR

BACKGROUND

1. On March 17, 2014, the Grievor suffered a workplace injury during the course of her duties as a Conductor. On March 19, 2014, she was placed on “at work injury” status by the Company as she was temporarily unable to perform her work as a conductor.

2. Unable to identify a modified version of her regular position as Conductor that she would be fit to perform while she recovered from her injury, the Company identified that she could instead complete training for Traffic Coordinator which she is required to complete as part of her employment with the Company.

3. According to Article 148.11 c) ii) of the 4.3 Agreement governing the position of Conductors:

148.11

[...]

c) All employees with a seniority date subsequent to June 29, 1990 will be required:

(i) to protect all work in accordance with this article over the seniority territory governed by this Agreement and in addition they will be required to protect work governed by other Collective Agreements on the Region;

(ii) to accept and successfully complete training as a locomotive engineer or traffic coordinator and will not be permitted to relinquish traffic coordinator’s seniority;

(Underlining added)

4. Traffic Coordinators are positions that fall under a separate collective agreement, commonly referred to as the 4.2 Collective Agreement, governing other types of positions that also work in CN's yards but responsible for other aspects of train operations.

5. On March 28, 2014, the Grievor returned to work to begin attending the Traffic Coordinator's training.

6. On April 27, 2014, the Grievor completed her traffic coordinator training and thereafter returned to her regular duties as a Conductor on April 29, 2014, in accordance with a medical note provided by the Grievor stating that she was fit for regular duties.

7. During the training, the Grievor was compensated \$261.61/day (\$1,308.06 per 5-day workweek), which consists in the applicable rate of pay for attending the Traffic Coordinator Training Course according to Article 11.3 b) of the 4.2 Agreement, which sets out the rate of pay for training :

11.3 The following rates of pay will apply when attending training courses provided herein:

[...]

b) Employees governed by an agreement signatory by the TCRC will be paid the (on the following basis) per 40 hour week during the period of time assigned to the training course.

EFFECTIVE		
July 23, 2010	July 23, 2011	July 23, 2012
\$1,237.78	\$1,269.96	\$1,308.06 ¹

¹ The 2012 rate was applicable at the time in 2014, due to the late renewal of the collective agreement.

DISPUTE

8. The dispute is related to the rate of pay applicable to the Grievor while undergoing Traffic Coordinator training during the period of March 28, 2014 to April 27, 2014.

9. The Union takes the position that the Grievor was entitled to payment for Modified duties in accordance with Article 150 of Agreement 4.3 with a daily rate of pay based on her earnings in the 30-day period prior to the injury:

10. Article 150 of Collective Agreement 4.3 states:

150 Payment for Modified duties will be established as follows:

- a) A period of 30 days immediately prior to the date of injury or illness will be identified. Any days off for miles, annual vacation, authorized leave of absence (including personal leave days) or bona fide illness will be excluded from the sampling period.
- b) The earnings during the above 30-day period will be identified and will be used in calculating a daily rate.
- c) To establish a daily rate, the earnings calculated in b) above, will be divided by 30 or prorated if reduced by a) above.
- d) The daily rate will be paid to employees based on a 7 days per week basis.
- e) Employees on modified duties will protect their work on a 5 days per week basis.

11. According to the Union, the language of Article 150 was proposed so that disabled employees would not be financially prejudiced by their limitations in the course of their accommodation. The plain intent of Article 150 is to provide continuity of wages to a disabled employee.

12. The Company takes the position that the Grievor was properly compensated for training as Traffic Coordinator under the provisions of the 4.2 Collective Agreement.

13. Subsidiarily, the Company argues that Article 150 only applies to employees performing a modified version of the duties covered by the 4.3 Collective Agreement. It does not expand the modified duty payment entitlement to situations where employees are performing alternate duties or positions covered by different collective agreements.

DECISION

14. Following a workplace injury, the Grievor was temporarily unfit to perform her regular job of Conductor.

15. In the circumstances, the Grievor completed mandatory training for a Traffic Coordinator position.

16. Under Article 148. 11 c) ii) of the 4.3 Agreement governing the Grievor's regular duties, all employees with a seniority date subsequent to June 1990 are required to successfully complete training as a Traffic Coordinator.

17. This is mandatory training for the Grievor and all her colleagues also working under the 4.3 Agreement meeting this provision's length-of-service criteria. The Grievor,

as with all other such employees, must retain her Traffic Coordinator seniority once qualified.

18. It is not disputed that any Conductor, taking Traffic Coordinator training per their obligation under Article 148.11 c) ii) of the 4.3 Agreement, receives the rate of pay provided under Article 11.3 b).

19. The Grievor was paid a daily rate of \$261.61 under the 2012 rate of pay in accordance with Article 11.3 b) and therefore properly compensated in accordance with the 4.2 Agreement.

20. The training took sufficiently long to allow the Grievor to remain working while her injury fully healed. This training was also consistent with the Grievor's restrictions and required as part of her employment with CN.

21. Had the Grievor not been restricted from regular duty and required accommodation, she would similarly have been required to take and complete this same Traffic Coordinator training. She would also have been paid in the same manner, in accordance with Article 11.3 b) of the 4.2 Agreement.

22. The Union argues that the Grievor ought to have been paid Modified duty rates under Article 150 of the 4.3 Agreement, during the period where she underwent mandatory Traffic Coordinator training under the 4.2 Agreement.

23. Article 150 does not apply in the present case.

24. In accordance with Article 148. 11 c) ii) of the 4.3 Agreement, the Company offered the Grievor Traffic Coordinator training, which she is required to complete as part of her employment with the Company and she was paid accordingly.

25. The Grievor, like any other Conductor also normally working under the 4.3 Agreement but taking mandatory training precisely like the Grievor, would be receiving the normal training rate of \$261/day set out in Article 11.3 of the 4.2 Agreement.

26. The language contained in the 4.2 Agreement stipulates how employees governed by the 4.3 Agreement are to be paid when training as Traffic Coordinators and therefore, the Grievor was paid appropriately.

27. **NOW THEREFORE**, the CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION:

DISMISSES the grievance.

February 21, 2020



**SOPHIE MIREAULT
ARBITRATOR**