

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

CASE NO. 4797

Heard via videoconference and in Gatineau, Quebec, December 15, 2021

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The establishment of Aldershot as a new terminal.

JOINT STATEMENT OF ISSUE:

CN announced that, it would be assuming control of the Hamilton Yard and N&NW Spur (the "Hamilton Line") and the Hagersville subdivision. As part of the operational restructuring, CN also introduced plans to establish a new terminal at Aldershot.

The Union filed a grievance on April 9, 2018 alleging that CN was in violation of the 1.1 Agreement by failing to serve a Notice of Material Change in accordance with Article 78.

The Company declined the Union's grievance, maintaining that the establishment of Aldershot as a Terminal did not require notice as contemplated by Article 78 as there were no significant adverse effects upon the employees.

The Union's Position

The Union's position is that the Company is in violation of Article 78 of the 1.1 Collective Agreement where the Company has failed to issue a material change notice in this instance. The Company has failed to identify and address the adverse effects on the employees of Toronto South as a result of the plan to establish a new home station and reduce the work that has been traditionally and historically performed by Toronto South employees.

The Company initiated reduction in assignments at the Terminal of Toronto South will have significant adverse effects on those employees currently assigned to the home station of Toronto South, and in addition, significant adverse effects to other employees in terminals across the consolidated central seniority district and/or the 17th seniority district outlined in agreement 4.16.

The Union further submits as a result of the changes proposed by the Company it cannot be disputed that these initiated changes in the Toronto South Yard and Road assignments will create a surplus of employees at the home station of Toronto South and those employees deemed to be surplus as a result of the Company initiated changes will be required to permanently relocate themselves and their families to other locations across the consolidated central seniority district and/or the 17th seniority district outlined in agreement 4.16 in order to remain gainfully employed with CN Rail.

Based on the Company's proposed changes, it is the Union's position that the change of home station should trigger a Material Change Notice being properly served and negotiated as per the provisions of Article 78.1 of Agreement 1.1.

Company's Position

The Company disagrees with the Union's position. It is the Company's position that the reintegration of the previously leased properties would result in an overall increase in employment opportunities, therefore, Article 78 is not applicable. Even if adverse effects existed, which has not been established by the Union, it does not trigger a requirement for a material change as the purported adverse effects did not meet the threshold of "significant adverse effects" as contemplated under Article 78 of Agreement 1.1. In addition, despite multiple discussions, the Union has proffered no evidence to date to support their allegations.

Notwithstanding the foregoing, the grievance must be rejected as the Union has not identified any adversely impacted employees. There is thus no basis for the claim that the Collective Agreement was violated.

FOR THE UNION:

(SGD.) P. Boucher

General Chairperson

FOR THE COMPANY:

(SGD.) V. Paquet

Labour Relations Manager

There appeared on behalf of the Company:

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|------------|-----------------------------------------------------|
| V. Paquet | – Manager, Labour Relations, Toronto |
| M. Boyer | – Senior Manager, Labour Relations, Montreal |
| S. Roch | – Manager, Labour Relations, Montreal |
| J. Torchia | – Director Labour Relations, Strategy Ops, Edmonton |
| E. Sauvé | – Manager, Crew Systems and Planning, Toronto |

And on behalf of the Union:

- | | |
|--------------|----------------------------------------|
| M. Church | – Counsel, Caley Wray, Toronto |
| J. Lennie | – General Chairperson, Sarnia |
| G. Gower | – Vice General Chairperson, Rockland |
| E. Page | – Vice General Chairperson, Burlington |
| P. Boucher | – General Chairperson, Trenton |
| M. Kernaghan | – Vice General Chairperson, Trenton |
| C. O'Connor | – Local Chairperson, Grimsby |

AWARD OF THE ARBITRATOR

1. The issue in this grievance is whether the Company's decision to establish a new terminal at Aldershot, formerly an outpost of the Toronto South Terminal (TST), constitutes a material change as set out in collective agreement 1.1, thereby triggering certain obligations for the Company. The Union submits that this decision constitutes a material change. The Company disagrees.

Background

2. The following definitions regarding the Company's operations are important to this case:

Home Terminal: The terminal from which an assignment operates or from which an assignment is bulletined to operate.

Home Station: The terminal where the spare board is maintained and/or from which relief is supplied for employees on assignments.

Subsidiary Station: A location that is the home terminal of an assignment but is not the home station for employees who operate or provide relief for such assignments.

3. In 1997, the Company entered into a long-term agreement leasing out its Hamilton business. This led to the closure of the Hamilton Terminal and to the layoff of employees. There is no dispute that this involved significant adverse effects for employees, which triggered the application of the material change provisions of the collective agreement.

4. After the closure of the Hamilton Terminal, the Aldershot and Brantford yards, which were formerly part of the Hamilton Terminal, became subsidiary stations (commonly referred to as “outposts”) of TST. As a result, each outpost became the home terminal for its respective assignments and TST became the home station for employees operating or providing relief for the assignments at these outposts.

5. In 2018, the 1997 lease was not renewed and the Company reintegrated the business which had led to the closure of the Hamilton Terminal. The Company reorganized its operations, establishing Aldershot as a terminal (replacing the former Hamilton Terminal), effective December 14, 2018. The Aldershot and Brantford outposts of TST were converted back into yards, within the new Aldershot Terminal. Importantly, the assignments operating from each location did not change. However, a new spare board was introduced in Aldershot. Therefore, the Aldershot Terminal replaced TST as the home station for the assignments in Aldershot and Brantford.

6. TST and the Aldershot Terminal are approximately 80 kilometres apart and are both part of the 17th seniority district.

7. In April 2018, when the Company informed the Union of its intention to establish the Aldershot Terminal, it stated that it would not issue a notice of material change because there would be no significant adverse effect on employees. The Union disagreed and filed a grievance.

Analysis

8. Article 78.1 of the collective agreement defines what constitutes a material change and sets out the parameters applicable in such cases:

78.1 Prior to the introduction of run-throughs, changes or closures of home stations (including those brought about by the sale of a line), or the introduction of new technology initiated solely by the Company and having a significantly adverse effect on employees, the Company will:

(a) Give at least 180 days' advance notice to the Union of any such proposed change, with a full description thereof and details as to the anticipated changes in working conditions; and

(b) Negotiate with the Union measures to minimize any significantly adverse effects of the proposed change on employees but such measures shall not include changes to rate of pay.

(c) While not necessarily limited thereto, in the case of run-throughs and other changes described in this paragraph 78.1, the matters considered negotiable will include the following:

- (1) Appropriate timing
- (2) Appropriate phasing
- (3) Hours on duty
- (4) Equalization of miles
- (5) Work distribution
- (6) Appropriate accommodation
- (7) Bulletining
- (8) Seniority arrangements
- (9) Learning the road
- (10) Use of attrition
- (11) Deferred separation

NOTE: For the purposes of this Article 78, home station is defined as the terminal where the spare board is maintained and/or from which relief is supplied.

[Emphasis added]

9. Based on this provision and the facts of this case, the Union has the burden of establishing the following two elements to demonstrate a material change: 1) a unilateral change of home stations by the Company; and 2) a resulting significant adverse effect on employees.

10. Article 78.6 of the collective agreement sets out the exceptions as to what constitutes a material change, including normal changes inherent to the nature of the work:

78.6 The changes proposed by the Company which can be subject to negotiation and arbitration under this Article 78 do not include changes brought about by the normal application of the collective agreement, changes resulting from a decline in business activity, fluctuations in traffic, reassignment of work at home stations or other normal changes inherent in the nature of the work in which employees are engaged.

[Emphasis added]

Unilateral Change of Home Stations

11. The Union argues that the change implemented by the Company constitutes a *change of home stations*, as per the description of a material change under Article 78.1.

12. In contrast, the Company submits that the provision applicable in this case is Article 78.6, which sets out exceptions to what constitutes a material change. Specifically, the Company claims that the creation of the Aldershot Terminal was a *normal change inherent to the nature of the work in which employees were engaged*. Accordingly, by operation of Article 78.6, this “normal change” does not amount to a “material change”

and is excluded from the scope of Article 78.1. The Company relies on this Office's decisions in **CROA 332, 1444, 2893 and 3332**, which establish that moving assignments from one terminal to another is *inherent to the nature of the work*, and therefore does not constitute a material change.

13. The circumstances in the case before me are factually different from those upon which the Company relies. This is not a case where assignments moved from one terminal to another. On the contrary, the Company emphasized that "the work itself did not change locations" further to the establishment of the Aldershot Terminal. Therefore, I am not persuaded by the Company's argument that this situation is an exception to what constitutes a material change, as described in Article 78.6.

14. As mentioned earlier in this award, it is significant that an additional spare board was established in Aldershot. From 1997 to 2018, TST was the home station for the Aldershot and Brantford outposts. That is to say, TST was the terminal where the spare board was maintained and/or from which relief was supplied for employees on assignments in these outposts. When the Company established the Aldershot Terminal, the home station for assignments in Aldershot and Brantford changed from TST to the new Aldershot Terminal. In my view, that is precisely what is meant by the expression *change of home stations*, set out in Article 78.1. For this reason, the first element composing a material change is met: there was a unilateral decision by the Company to change home stations.

Significant Adverse Effect

15. This case turns largely on the second element of a material change, namely whether the change of home stations had a significant adverse effect on employees.

16. This Office has outlined characteristics of significant adverse effects that can establish a material change. Notably, the adverse effect must render employees' positions redundant, superfluous or otherwise undermine their job security (**CROA 1167 and 3083**), or significantly affect earnings, work opportunities or lead to demotion or layoff (**CROA 2364**). An adverse effect must be identifiable and quantifiable; it does not include unforeseen or indirect impacts (**CROA 2257**).

17. I turn now to the Union's submissions regarding what it considers to be adverse effects resulting from the establishment of the Aldershot Terminal.

Loss of Road, Yard and Spare Board Assignments and Locomotive Engineers Removed from the Working List

18. It is undisputed that the establishment of the Aldershot Terminal in 2018 resulted in a reduction in work opportunities for locomotive engineers at TST. The Company transferred 11 of the 19 road assignments (58%), three yard assignments (13%) and two road spare board assignments (50%) from TST to the Aldershot Terminal. The Union adds that the average number of locomotive engineers working the spare board reduced by 20% the year after the establishment of the Aldershot Terminal.

19. At the time of the establishment of the Aldershot Terminal, all TST locomotive engineers were given the opportunity to exercise their seniority to bid on regular or spare board assignments at TST or at the Aldershot Terminal. Employees who maintained or secured an assignment in Aldershot or Brantford automatically changed home stations, from TST to the Aldershot Terminal.

20. The Union submits that locomotive engineers had to make a definitive decision as to whether they wished to remain at TST or transfer to the Aldershot Terminal (or, in some cases, displace elsewhere over the district). After choosing one of the two terminals, each locomotive engineer had a reduced scope of work opportunities available to choose from, notably whenever they were displaced from their assignment. They were also limited to the regular and spare board assignments available at the terminal they selected, as opposed to the combined assignments/opportunities previously available at TST.

21. The Union provides examples of employees it claims were adversely affected by the requirement to select one of two terminals:

- i. R. Routhier transferred to the Aldershot Terminal on a regular assignment and was displaced. He ended up on the Aldershot locomotive engineer spare board.
- ii. J. Allan transferred to the Aldershot Terminal on a relief assignment and was displaced. He then displaced to a regular assignment at the Aldershot Terminal.
- iii. E. Page transferred to the Aldershot Terminal on a regular assignment and was displaced. He then declared to a conductor assignment at the Aldershot Terminal.

- iv. J. Clark transferred to the Aldershot Terminal on the locomotive engineer spare board. He was then cut-off from the locomotive engineer working list within the Aldershot Terminal and declared to a conductor position at the terminal.

22. The Union sets out two similar examples for TST in 2018, four examples in 2019 (covering three terminals) and six examples for 2020 (covering TST and the Aldershot Terminal).

23. That said, the Union did not demonstrate how these movements, resulting from each employee selecting his preferred terminal and from the normal application of the collective agreement, put these employees in a situation which was different than if TST had not been split in two. I note that it is not unusual for employees to alternate between conductor and locomotive engineer duties when they initially have enough seniority to secure locomotive engineer assignments.

24. TST was effectively split in two with the establishment of the Aldershot Terminal. This was done while preserving all the existing assignments and by keeping them operating from the same location. Locomotive engineers were able to bid to select their preferred terminal and most kept the assignments they were working prior to the establishment of the Aldershot Terminal. The mere fact that the number of opportunities available at TST was lower after the establishment of the Aldershot terminal does not necessarily constitute a significant adverse effect on locomotive engineers. A significant adverse effect must be demonstrated. In this case, the threshold is not met.

25. The Union also refers to an agreement reached with the Company in January 2020, one year after the establishment of the Aldershot Terminal, implementing a spare board guarantee for the TST locomotive engineer spare board, to address a shortage of locomotive engineers. Again, this does not demonstrate how the establishment of the Aldershot Terminal created a significant adverse effect on employees.

26. In the context where no assignments were eliminated or even moved physical location through the Company's reorganization of its operation, I am not persuaded that some employees would have had better work opportunities were it not for the establishment of the Aldershot Terminal. Most importantly, the Union did not demonstrate significant adverse effects for the employees.

Train L543

27. The Union argues that Train L543, a road switcher assignment belonging to TST and operating within TST switching limits, was moved to the Aldershot Terminal. The Union alleges that the Company unilaterally set up the switching limits of the Aldershot Terminal in a way to justify transferring Train L543 from TST to the Aldershot Terminal.

28. The Company submits that this assignment operated from the Oakville outpost of TST and continued to be operated from the same location when the outpost was converted to a yard within the new Aldershot Terminal.

29. Assuming, without deciding, that the transfer of the assignment from TST to the Aldershot Terminal, along with a corresponding change in switching limits, could constitute a material change, the Union did not demonstrate how the change had a significant adverse effect on TST locomotive engineers. For example, it provided no details as to whom at TST would have obtained that assignment prior to the establishment of the Aldershot Terminal and did not obtain it after, and how this would have significantly affected one or more employees, financially or otherwise. This is important, as Article 78.1 provides that a change must have significant adverse effects on employees to be material. Yet, the assignment was and continued to be operated from Oakville after the establishment of the Aldershot Terminal.

Lost Personal Leave Days and Vacation Entitlement at TST

30. There is no dispute that after the establishment of the Aldershot Terminal, employees' individual entitlement to personal leave days ("PLDs") and vacation remained the same. However, the Union alleges that employees who remained at TST suffered a significant adverse effect from the reduced number of employees who can be off on PLDs or vacation at the same time. It claims that TST locomotive engineers lost two of their three daily PLD allotments, thus reducing the opportunities for TST employees to take PLDs. Similarly, the number of TST employees who can take vacation in any given week was reduced with the establishment of the new terminal.

31. In my view, the proportion of PLDs and vacation allowed at once is more relevant than the net number. The Union has not demonstrated that the ratio of PLDs or vacation

allotments at TST was reduced beyond the proportion of employees who changed home stations. Nor did it demonstrate any other significant adverse effect on TST employees.

Reduced Earnings

32. The Union's evidence shows that the annual earnings of four locomotive engineers were reduced from 2018 to 2019, as well as the earnings for two locomotive engineers from 2019 to 2020. The annual reduction for each of them varied by approximately \$4,300 (from total earnings of approximately \$132,000) to more than \$15,000 (from total earnings of approximately \$102,000).

33. The Company submitted a document comparing TST employees' earnings for the six months prior to the establishment of the Aldershot Terminal and the six months after. For the four employees referred to by the Union, this document shows that two of them had increased earnings in the first six months of the transition. As for the two employees with reduced earnings, those were explained by employee absences, including PLDs, a leave of absence and union leave.

34. The parties did not make submissions as to whether the six-month or the twelve-month comparison was more appropriate. Therefore, as the onus is on the Union to show the adverse effect of the change of home stations, I prefer the Company's uncontested evidence, which provides a comparison over a period of six months before and after the transition, a reasonable period in my view. Of note is that the Union's data shows two cases of reduction in total earnings in 2020 compared to 2019, one of approximately \$8,000 and the other of approximately \$11,000. Since there were no changes of home

stations from 2019 to 2020, I must assume that the reductions in earnings were due to other reasons. In the circumstances, having regard to the evidence before me, I am not persuaded that there is a nexus between the reduction in employee earnings and the change of home stations.

Past Practice

35. Finally, the Union submits that past practice regarding changes of home stations dictates a notice of material change in this case. The Union relies on one example where the Company effected changes of home stations and issued a notice of material change: when the Company closed the Niagara home station and created the new home station of Port Robinson, formerly an outpost, 11 kilometres away, in 2012.

36. While the Union alleged past practice, it did not make a case to support that such an aid to interpretation of the collective agreement is required. Similarly, it did not demonstrate, or even argue, that an estoppel has been established through detrimental reliance (**CROA 4606**). Simply referring to a prior similar situation between the parties, without providing factual details, does not allow for a finding of past practice.

Conclusion

37. The facts of this case are materially different from those in the cases cited by the Union. The Aldershot and Brantford yards had been outposts for two decades when the Company established Aldershot as a terminal in 2018. Assignments were already

operating from those locations and employees were able to bid and continue working on those assignments.

38. On the evidence before me, I am unable to conclude that employees who remained at TST suffered a significant adverse effect due to the establishment of the Aldershot Terminal. Similarly, employees who went from TST to the Aldershot Terminal suffered no significant adverse effect. In short, the Union has identified no significant monetary or non-monetary adverse effect on employees, resulting from the change of home stations with the establishment of the new Aldershot Terminal.

39. For these reasons, I find that the establishment of the Aldershot Terminal did not constitute a material change under Article 78.1 of collective agreement 1.1, and therefore did not trigger the related obligations for the Company.

40. The grievance is dismissed.

October 11, 2022



JOHANNE CAVÉ
ARBITRATOR