CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 4830

Heard in Edmonton, June 20, 2023

Concerning

CANADIAN NATIONAL TRANSPORTATION LTD.

And

UNIFOR - 4000

DISPUTE:

The Union alleges that the Company has expanded duties onto CN Transportation Ltd. (CNTL) Owner-Operators at the Brampton Intermodal Terminal (BIT).

THE COMPANY'S EXPARTE STATEMENT OF ISSUE:

Sometime in 2020 or thereabouts, CNTL began requiring CNTL Owner-Operators at BIT to fuel heated and refrigerated (reefer) Intermodal cargo containers. Around that time, Supervisors of Trucking Operations issued emails to CNTL Owner-Operators with instructions on how to fuel these containers.

The Union contends that these instructions and duties are in breach of Clause 2.09 of the Standard Contract between CNTL and its contracted owner-operators, and Articles 1.1, 1.2, 1.3, 1.4; and Appendix 4 of the collective agreement.

The Union seeks an order to have CNTL immediately refrain from this ongoing practice.

The Company does not agree and has declined the grievance.

THE UNION'S EXPARTE STATEMENT OF ISSUE:

Sometimes in 2020 or thereabouts, CNTL began requiring CNTL Owner-Operators at BIT to fuel heated and refrigerated (reefer) Intermodal cargo containers. Around that time, Supervisors of Trucking Operations issued emails to CNTL Owner-Operators with instructions on how to fuel these containers, duties that had traditionally been performed by third-party contractors.

The Union contends that these instructions and duties are in breach of the Standard Contract between CNTL and its contracted owner-operators, and Articles 1.1; 1.2; 1.3; 1.4; and Appendix 4 of the collective agreement.

The Union seeks an order to have CN and CNTL immediately refrain from this ongoing practice.

The Company does not agree and has declined the grievance.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) B. Kennedy	**(SGD.) L. Williams**
National Representative	Human Resources Business Partner

There appeared on behalf of the Company:

R. Charney	– Counsel, Norton Rose Fulbright, Toronto
L. Yaacoub	– Co-Counsel, Norton Rose Fulbright, Toronto (*via* Zoom)
Francois Daignault	– Director, Labour Relations
M. McKay	– Sr. Manager, Road Operations, Toronto

And on behalf of the Union:

B. Kennedy	– National Representative, Edmonton
P. Sekhon	– Regional Representative, Mississauga
K. Gill	– Local Chairperson, Brampton
G. Brar	– President, Local 4001, Calgary

AWARD OF THE ARBITRATOR

I. Summary

[1] This Grievance concerns whether the Company can direct dependant contractors to do certain work.

[2] For the reasons which follow, the Grievance is allowed.

II. Background Facts

[3] The Company ("CNTL") is a trucking brokerage company and a wholly owned subsidiary of CN. It contracts with customers for the movement of containerized goods by truck across long distances, between the rail terminals and those customers' facilities. The Company has nine such terminals across the country. The largest of these terminals – and the headquarters of the Company - is the Brampton Intermodal Terminal (the "BIT").

[4] While the Company provided details of how the disputed work was performed at other terminals, it is the work at the BIT that is the subject of this Grievance.

[5] Approximately 2000 to 2500 trucks enter the BIT each day. Of these, 320 are operated by Owner-Operators. These are individuals who own and use their own trucks and contract to do work for CNTL, rather than CNTL employees who drive trucks which are owned by CNTL.

[6] In 1994 the parties entered into a two-pronged relationship. First, it was agreed that the Owner-Operators were dependant contractors, as that term is understood

under the *Canada Labour Code*. Each Owner-Operator was required to enter into the same "Standard Contract" with CNTL (the detail of which is reproduced, below). Under the Standard Contract, CNTL "engaged the services" of each individual "to provide transportation service for purposes of its business"; each individual was "willing to provide the same on the terms and conditions herein set forth".

[7] Neither party disputed that the Standard Contract – with its three Schedules – set out the terms and conditions under which each Owner-Operator agreed to provide services to CNTL, including how those Owner-Operators were to be paid.

[8] The Union and CNTL also entered into a collective agreement. Under the terms of that Agreement, the Union represented the Owner-Operators, and they had access to a grievance procedure, under which this Grievance was filed. The parties agreed to use the expedited process of this Office to resolve their disputes.

[9] This Grievance is a dispute over the type of work that the Company can direct these Owner-Operators to do.

[10] The Company has raised a preliminary objection that the Union has attempted to expand the Grievance in the JSI. It argued that in its *ex parte* Statement of Issue, the Union relied for the first time on Articles from the contracts which were not raised in the Grievance procedure.

III. The Disputed Provisions

From the Standard Contract

> WHEREAS the Company is a common carrier engaged in the transportation by motor vehicles of goods and commodities for hire;
>
> AND WHEREAS the Contractor carries on business as an independent trucking contractor providing a transportation service and the necessary equipment and driver or drivers therefor;
>
> AND WHEREAS the Company is desirous of engaging the services of the Contractor to provide a transportation service for purposes of its business and the Contractor is willing to provide the same on the terms and conditions herein set forth;
>
> …
>
> IT IS HEREBY AGREED between the parties hereto as follows:
>
> 1:00 Provision of Services
>
> 1:01

Subject to the terms of the agreement between the Company and the Canadian Brotherhood of Railway, Transport and General Workers (*the Union)* ….dated 31st of May 1994… the Company engages the services of the Contractor and the Contractor agrees to provide the transportation service and make available therefore the tractor, tractors, trucks or other vehicles….

1.02

(1) The Company hereby agrees to pay the Contractor for the transportation service provided by him in accordance with the mileage rates and other charges specified from time to time in *Schedule "B"* hereto

…

1.03

The Contractor … [covenants] to observe and comply with the rules and regulations set forth in Schedule "C" hereto as the Company may dictate from time to time with respect to the dispatch, shipping and handling of its freight and the services to be performed hereunder in connection therewith, the conduct of drivers and operators and other matters pertaining to the transportation services herewith contracted for, all of which rules and regulations now or hereafter in force are to be read as forming part of the terms and conditions of this agreement. It is understood and agreed that such rules and regulations are subject to review and may be changed from time to time in a manner not completely at variance and inconsistent with the terms, conditions spirit and tenor of this agreement between the Company and the Contractor, without the necessity of rewriting this agreement in its entirety.

…

2.09

The Company agrees, at its own expense, to maintain its trailers and chassis in good operating condition during the term of this agreement and whenever assigned to and utilized by the Contractor for the purposes hereof and to maintain the same, to replace all worn out or defective tires, parts, accessories or other equipment thereon or therein, and to have such trailers and chassis in safe and road-worthy operating condition whenever utilized by and assigned to the Contractor hereunder.

Schedule B – Rates of Payment Brampton

All Operations:

[fuel adjustment formula, waiting time (at customer); Terminal Time; and Shunting (connecting to 3 or more chassis at one stop) are listed

Mileage Operations

[per mile rate; Off Line Move rate; Zone rated operations; safety bonus, fuel conservation allowance; and equipment cleaning are listed]

…

2. Terminal Time (per hour) $39.00

From the Collective Agreement

Article 1.1

Canadian National Transportation Limited, herein referred to as "*the Company",* recognizes Unifor and Unifor National Council 4000, herein referred to as "*the Union*", as the sole collective bargaining agent for all owner-operators engaged under a standard contract by the Company.

Article 1.2

In this agreement, "*owner-operator"* shall mean a person who is contracted to the Company to provide transportation service and to make available for this purpose a single highway tractor and related equipment, all under the terms and conditions set out in a standard contract between the Company and the individual owner-operator. For the purposes of this agreement, an owner-operator shall be deemed to be a dependent contractor of Canadian National Transportation Limited within the meaning of that term as found in Part 1 of the *Canada Labour Code.*

Article 1.3

The Company agrees not to enter into any agreement or contract with owner-operators, individually or collectively, which in any way conflicts with the terms and provisions of this agreement without the express consent of the Union. Any such agreement or contract will be null and void.

Article 1.4

The standard contract shall require that all owner-operators covered by paragraph 1.1 of this article become and remain members of the Union during the continuance of this Agreement.

Article 3.1

Except to the extent that management's rights have been otherwise limited or modified by the specific terms and conditions of this collective agreement, the Union recognizes the exclusive right and authority of the Company to manage the affairs of its business and to direct its owner-operators subject always to the terms of this collective agreement. Management's rights include:

(a) The right to engage, direct, assign, and adjust the number of owner-operators.

(b) The right to determine schedules of work; type of equipment; service, work and operational standards.

(c) ….

(d) …

Article 5.5

Within fourteen (14) calendar days of receiving decision under Step1, the Local Chairperson or their designate of the Union, will advise and meet with the Driver Manager (or their designate) in a Grievance Meeting with the aim of resolving outstanding grievances declined at Step 1. Every effort shall be made to schedule such meeting during normal working hours. A decision will be

rendered within seven (7) calendar days from the date the Grievance Meeting is held.

Article 5.6

Within forty-five (45) calendar days of receiving [a] decision under Step 2, the designated Representative of the Union may appeal to the designated Senior Company Officer. The appeal shall include a written statement of the grievance and where it concerns the interpretation or alleged violation of the collective agreement, the statement shall identify the article and paragraph of the article involved.

Appendix 4 [Titled "Expansion of the Duties of Owner-Operators" in the Table of Contents of the Collective Agreement]

[letter dated February 1, 2001 to Mr. Rick Johnson, President, Council 4000 (CAW – Canada); from Ian Kelland, Director, Road Operations, CNTL]

> Dear Mr. Johnston:
>
> During negotiations leading to renewal of the owner-operator collective agreement, the Company served a proposal which would expand the duties of owner-operators and allow them to perform shunting, preloading, and other functions in intermodal yards not directly connected with the simple pick up and drop off of their equipment.
>
> The Company noted there are a number of specific practices and agreements currently in effect, at certain locations, which reflect such expanded assignments.
>
> The Union, for its part, declined this proposal, viewing that all such assignments in the Intermodal yards were properly the work of Intermodal employees.
>
> In order to achieve final settlement, the Company withdrew its demand, and the parties agreed for the duration of the collective agreement:
>
> 1. That current mutually recognized local practices and agreements would remain in place; and
> 2. That there would be no expansion of work assigned to owner-operators in Intermodal yards beyond the situations expressed in item 1 except by mutual written agreement with the President of Council 4000.

IV. The Dispute

[11] The dispute relates to the fueling of what are known as "Heaters" and Reefers". These are intermodal cargo containers that are required to either be kept warm or cool during transport, to protect the cargo inside.

[12] This temperature control is powered by diesel fuel. The containers must be filled with that fuel prior to leaving the rail terminal.

[13] It is not disputed that while the cargo is moving from place to place on the trucks, the Owner-Operators are required to monitor the operation of the Heaters and Reefers, to ensure the equipment is working properly and that the cargo is protected.

[14] Some history of how these cargo containers have been fueled in the past provides context for how the dispute has arisen.

[15] At BIT, a fuel truck had originally fueled the Heaters and Reefers. The Owner-Operators were paid at the "Terminal Time" rate while waiting in the terminal for this fueling to take place. In April of 2017, the Company installed a fuel tank at BIT and contracted with an independent fuel attendant to fuel the cargo containers. The Owner-Operators continued to be compensated at the Terminal Time rate while waiting for this fuel attendant to fill the cargo containers with fuel.

[16] Sometime in 2020, the Company felt it would be cost-effective to install fuel tanks and to require the Owner/Operators to fuel these cargo containers themselves.

[17] On November 6, 2020, the Company sent out a memo which stated that Owner-Operators would be required to fill the cargo containers with diesel fuel, once the construction of a fuel stand was complete.

[18] On November 11, 2020, the Union filed a Group Grievance on behalf of the Owner-Operators.

[19] The Grievance Claim Form was reproduced at Union Exh. 4. As the Company has alleged the Union has not properly listed the Article in dispute, details of that form are reproduced. The Grievance alleged:

> The Company is in direct violation of Appendix 4, Article 2.09 in the Standard Contract between Canadian National Transportation Limited (CNTL) and Estoppel letter dated March 23, 2019, during the last round of bargaining. On November 6, 2020, the Company has sent out a memo via email, instruction (PDF File only) of the Fuel Stand in the north end of the Brampton Intermodal Yard (BOT) that is under construction when its finished the CNTL Dependent Contractor will require to maintain CN equipment and fill its units with 'Diesel Fuel' something that we normally did not do since the establishment of CNTL.

[20] It was then alleged there were several safety related issues relating to the safe handling of Diesel Fuel and that the Company had failed Part II of the *Canada Labour Code* relating to Canadian Health and Safety Regulations. The Union then stated:

> It is a Union position that the Company is not in full compliance with both the Standard Contract and Collective Agreement and that the rules must be consistently enforced by the company…
>
> … [referring to "KVP"]
>
> It is our opinion that the Company acted arbitrary and unwarranted in expanding assignments in the Intermodal yards to CNTL Owner Operators.
>
> The Union is requesting the Company to revisit this matter and declines this proposal as such assignment in the Intermodal Yards is in fact work of intermodal employees and not the CNTL Dependent Contractors. We are also requesting the Company to withdraw the demand and expansion duties to CNTL All [sic] Owners-Operators [sic] as it is the responsibility of the Company to maintain the CN equipment.

[21] On November 13, 2020, the Company responded to this Grievance:

> In response to the Unions allegation that the Company is in violation of Appendix 4 of the CBA, the Company denies any wrongdoing or violation of this Appendix. The fueling of Reefers/Heaters is not an expansion of duties rather, normal course of business to effectively service customer requirements. The Company would like to reference Article 8.1 of the CBA where it states "Pursuant to the terms of the standard contract, Owner-Operators are required to fulfill the duties and responsibilities connected with the provision of transportation services in a safe, proficient, and lawful manner. In circumstances where an Owner-Operator fails to fulfill such duties and responsibilities, or provides unsatisfactory service, or engages in misconduct, CNTL may implement progressive disciplinary measures necessary to effect desired changes in behaviour in accordance with the following principles".
>
> Fueling of Reefers/Heaters would fall under the responsibilities of the Owner-Operator to effectively service and meet the requirements of the customer. CNTL Contractors perform the fueling of Reefers/Heaters at every other terminal in Canada.
>
> In response to the allegation that the Company is in violation of Article 2.09 of the Standard Contract, the Company denies this allegation and argues that fueling of Reefers/Heaters does not fall under the category of maintain or maintenance. The technical meaning of maintenance involves functional checks, servicing, repairing or replacing of necessary devices, equ8ipment, machinery, building infrastructure, and supporting utilities in industrial, business, governmental, and residential installations. Given the above information, the Company hereby denies this grievance.

[22] Under Article 5.5 of the Collective Agreement, Step 2 is a Grievance Meeting with the Driver Manager (or designate). Exh. 4 (Union) has details of that meeting. The details note that the Grievance was declined at this Conference. The Comment on the Grievance Claim Form states:

> Requesting a 5.5 meeting, Article 8.1 has no merits to the claim at all. Brampton terminal fulling [sic] reefers and heaters were always done by a third party and not the CNTL Owner Operators. It is also the union position that the estoppel letter is violated. Fueling CN equipment and handling hazardous material is not a responsibility of CNTL dependent contractors' [sic]. Also, the Standard Contract between the Company and the Contractor Schedule A "Customers" fueling of reefers/heaters do not fall under the responsibilities of the owner-operators.

[23] On November 24, 2020, the Company repeated its response to Step 1, in its response to Step 2.

[24] On December 14, 2020, the Union proceeded to Step 3 in a lengthy letter (Union Exh. 8). In that letter, the Union alleged violation of Articles 1.1, 1.2, 1.3, 1.4 and Appendix 4 in the Collective Agreement. It also alleged violation of Article 2.09 and Schedules "B" and "C" in the Standard Contract, and section 94 of the *Canada Labour Code.*

[25] The Union also referred to an estoppel letter dated March 23, 2019, given by the Union during collective bargaining, which stated, in part:

> The Union recognizes that the company has been assigning members duties and responsibilities that fall outside of the scope of the collective agreement. Such duties include [several duties are listed, such as snow removal and load securement]…Effective immediately, such duties will not be performed by CNTL members unless recognized by mutually written agreement under an expansion of duties agreement with rates included by the consent of the President of Council 4000.

[26] On January 28, 2021, the Company responded by stating:

> With respect to this grievance, the fueling of intermodal equipment that requires fuel to operate is part of the requirements of an Owner Operator and normal course of business. As has been clearly identified in step 1 and 2 of this grievance process, this is not an expansion of duties and not a violation of the collective agreement or the standard contract. Therefore this grievance is denied.

[27] In its *ex parte* JSI, the Union referred to Articles 1.1, 1.2, 1.3, 1.4 and Appendix 4 of the collective agreement, which are the same provisions which it referred to in its Step 3 Grievance.

V. The Preliminary Objection

[28] The Company argued the Union is expanding the scope of the Grievance by including a reference to Articles 1.01, 1.02(1), 8.01, 8.02 of the Standard Contract and Appendix 1 of the Collective Agreement and other relevant clauses of the Standard Contract, and that this is contrary to Article 5.6 of the Collective Agreement. The Union argued is has not expanded the scope of the Grievance and in any event the Company has not been prejudiced. It points out its reference to the specific clauses of the Standard Contract was to point out the parallel provisions in the Standard Contract, to which the Collective Agreement refers.

[29] Article 5.6 requires that the Union outline the specific articles *of the collective agreement* in its appeal to the Step 2 grievance (which is done at Step 3). In Step 3, the Union outlined Articles 1.1, 1.2, 1.3, 1.4 and Appendix 4 of the Collective Agreement, as being in dispute. The Union put into issue Article 1.1 of the Collective Agreement. That Article recognizes that the Standard Contract has engaged the services of the Owner-Operators.

[30] The parties did not dispute the Standard Contract contained the terms and conditions under which the Owner-Operators were employed, including rates of pay (in Schedule “B”). The Collective Agreement refers to the Standard Contract specifically by name in several sections, even though in the Standard Contract it is stated that it is *not* part of the Collective Agreement. The preamble to the Standard Contract also sets out that the Owner/Operators are to provide “transportation services” to the Company.

[31] It is the interpretation of *that* phrase that is at the core of that Agreement and at the heart of this dispute. Article 5.6 does not require that the Union state the Articles of the *Standard Contract* which are alleged to have been violated at Step 3, in order to put the issue properly into dispute.

[32] In Step 3 of the Collective Agreement, the Union has properly referred to the Articles of the Collective Agreement which put the terms of the Standard Contract as that Agreement recognizes that it is *that* contract which engaged the services of those Owner-Operators.

[33] Even if this were not the case, it is a well-established principle that an arbitrator must ensure that technicality does not trump substance in labour arbitration, to ensure that the real issue in dispute is adjudicated. I am satisfied in this case that to find in favour of the Company on this preliminary objection would not serve that end. Grievances are drafted by laymen and not by those with legal minds. In this case, both parties are aware that the issue raised by the Union was whether the Owner-Operators are properly required to fuel Reefers and Heaters as part of the "transportation services" for which they have been engaged under the Standard Contract, which is referred to in the Collective Agreement. That issue was put squarely into dispute.

[34] Unlike the jurisprudence cited by the Employer, in this case the parties have had the opportunity to address that issue in the grievance process; the issue in the Articles noted by the Union is not "new".

[35] I therefore do not consider that the Union has expanded the scope of this grievance.

[36] The preliminary objection is over-ruled.

VI. Arguments

[37] The Union has argued the Company has improperly expanded upon the contractual obligations of the Owner-Operators by requiring them to fuel the Heaters and Reefers and that this work is not within the meaning of the phrase "transportation service". For its part, the Company argues that the phrase is broad enough to encompass fueling of the cargo containers and even if not, the Company has residual management rights to direct its workforce under the Collective Agreement and it has exercised those rights. It argued its interpretation is supported by the past practice at BIT and the terms of Appendix 4. It points out its decision was taken for

valid business reasons, in good faith and was not taken in an arbitrary or discriminatory manner.

VII. Analysis and Decision

The Principles of Contract Interpretation

[38] This is an interpretation grievance. At issue is the interpretation of the phrase "transportation services". Precedents are of limited value to this type of question. Rather, the task of an arbitrator when determining the meaning of a phrase in a contract is to determine the parties' mutual objective intentions at the time the contract was made. That objective intent is grounded in the "plain and ordinary meaning" of the words the parties have chosen to record their deal.

[39] This principle was adopted by the Supreme Court in *Re Rizzo and Rizzo Shoes Ltd,*[1] from Professor Driedger's leading text and is known as the modern principle of interpretation. It requires an arbitrator to read the words of a contract in its entire context, and in the grammatical and ordinary sense (sometimes referred to as the "plain ordinary meaning"), harmoniously with the scheme (the provisions as a whole), the object (the ends sought to be achieved) and the intention of the parties (which is determined from the words they use)[2]. A contextual reading of a disputed phrase – as it sits within the clause and as it sits within the contract as a whole – is required. An adjudicator must also be alive to the labour relations – and employment - context in which agreements are negotiated.

[40] The modern principle of contract interpretation allows a dictionary definition to inform meaning, when a specialized meaning is not apparent from the contract.

Application to the Facts

[41] Article 1.01 of the Standard Contract sets out that the Contractor "agrees to provide **transportation service** and make available therefor the tractor, tractors, trucks or other vehicles" (emphasis added). The phrase "transportation service[s]" has not been defined by the parties. It is thos phrase that must be interpreted to resolve

[1] [1998] 1 S.C.R. 27
[2] E. Driedger, *Construction of Statutes*, at p. 150.

this Grievance. The parties have not defined this phrase and it has no specialized meaning.

[42] The Oxford English Dictionary defines "transportation" as "[t]he *action or process of transporting*; conveyance (of things or persons) *from one place to another*" (emphasis added). The Merriam-Webster dictionary defines "transportation" as: "an *act, process or instance of transporting or being transported;* means of conveyance or travel *from one place to another*; public conveyance of passengers or goods especially as a commercial enterprise" (emphasis added).

[43] I am satisfied upon review of the terms of the contract as a whole, that the phrase "transportation services" refers to an act or process of *moving* cargo "from place to place" and that there is nothing in the contracts which would alter that meaning. Rather, a review of the terms of the Standard Contract *supports* that interpretation. The use of vehicles to perform the "transportation service" – which is noted in Article 1.01 – implies *movement.* Article 1.02 refers to the payment of "mileage rates" for the "transportation service". Mileage also implies *movement*. Likewise with the tasks which the Company noted are performed by Owner-Operators on "Terminal Time", such as *transporting* a unit to a designated "flip" area and *bringing a unit to* the quick repair lane. These tasks also involve "movement".

[44] The Company has urged in its Rebuttal argument that Owner-Operators are already required to perform certain services to preserve cargo, and that fueling is a similar service. The company notes as an example that sometimes Owner-Operators would get bracing materials for the cargo. However, the Standard Contract makes *specific provision* for picking up this type of material in Schedule "C". Specific provision is also made for when an Owner-Operator is required to "clean" a container, in Attachment N to the Memorandum of Settlement dated September 12, 2019. Owner-Operators are paid *extra* for this *specific type of work* relating to the container. As noted by the Union, there are no rates of pay in Schedule "B" which relate to any other additional services, beyond "cleaning". Rather, the rates of pay listed relate to the "movement" of cargo. Rather than supporting the argument of the Company, these provisions support the conclusion that when the

parties intend Owner-Operators to perform work *beyond* the movement of cargo, they set out that work with specificity. There would be no need to do so, if "transportation services" already included this type of work.

[45] I accept the Union's position that "Terminal Time" is paid for time which an Owner-Operator must spend waiting to be loaded or unloaded at the rail terminal before goods can be transported; just as "waiting time" - which is also listed in Schedule "B" - is paid for the same type of time spent at a customer's facilities.

[46] While Article 1.03 notes that the Company can dictate rules for the "dispatch, shipping and handling of its freight", this is stated to be "pertaining to the transportation services herewith contracted for"….(emphasis added). This is not an open-ended requirement that an Owner-Operator must obey all of the dictates of the Company for the *preparation* of the Company's freight. While the Owner-Operators are required to ensure that – *while being transported* – the cargo is protected through monitoring how those containers are either heating or cooling, *monitoring* during transport and *preparing* for that transport are two distinct actions.

[47] I therefore cannot agree the contractual arrangement between the parties requires the Owner-Operators to *prepare* cargo to be transported, by fueling the intermodal cargo containers. This would be akin to telling the courier when he comes to pick up a package from your home that he must first pack and tape the box.

[48] I do not find it necessary to interpret Appendix 4 to resolve this question. Neither do I find the phrase "transportation service[s]" to be ambiguous, such that past practice must be considered to determine its meaning. I have been able to determine the meaning of the phrase "transportation service" by consideration of its "plain and ordinary meaning", with consideration to the object, scheme and intent of the Standard Contract and the Collective Agreement, as required by the modern principle of contract interpretation.

[49] The Company has argued it has reserved to itself residual management rights to direct its workforce, which are applicable to its direction to the Owner-Operators to fuel the containers. I agree it *is* a fundamental right of management to organize and direct the workforce, as noted in *NGF Canada Ltd. v. Workers United Ontario*

Council, 2010 CarswellOnt 8105. However, that is only true *so long as the Company has not fettered that right*. This is recognized by the wording in Article 3.1 of this Collective Agreement, which states: "Except to the extent that management's rights have been otherwise limited or modified….".

[50] Management can fetter *any* right, no matter how fundamental. The Company has *not* chosen to hire the Owner-Operators as employees, but rather to hire them as *dependant contractors*, working under specific contractual terms, and providing a specific service. The "work" of the Owner/Operators which the Company has reserved for itself by Article 3 of the Collective Agreement has been made subject to what the Owner/Operators and the Company have agreed is to be the work those individuals have been hired to do: provide "transportation service[s]".

[51] I am therefore satisfied the Company has fettered its right to direct the work of the Owner-Operators by using clear and express language to limit that work to the provision of "transportation service[s]".

[52] The Company noted that Owner-Operators were already compensated at Terminal Time when waiting for these containers to be fueled. It argued its decision to assign this work was made for valid business reasons to create efficiencies, was not arbitrary and was not taken in bad faith.

[53] While it can be appreciated that the Company saw an opportunity to gain efficiency, if the Company did not have a basis to make that choice in the first place, then making that decision for legitimate business reasons, in good faith, not arbitrarily or not discriminatorily does not insulate its decision from review. Put another way, paying Owner-Operators to wait does not open a door to assign them work other than that which has been agreed on, while they are waiting.

Summary

[54] I am satisfied from a review of the contractual terms as a whole that the "*transportation service[s]*" which the Owner-Operators contracted to perform relate only to the *transportation* of that cargo from "place to place" and not to the "*preparation"* that cargo must undergo to become *ready to* "be transported".

[55] It is not necessary to address the Union's argument of estoppel or to interpret the application of Appendix 4 and I decline to do so. Neither is it necessary to consider or address how other terminals address fueling of cargo, as the factual basis for this Grievance is the practices at the BIT.

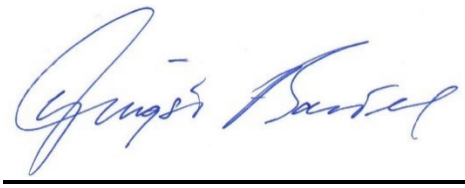
[56] I am satisfied CNTL has improperly expanded the scope of work the Owner-Operators have contracted to perform, by requiring that they fuel the temperature control systems of CNTL's cargo containers at the BIT.

VIII. Conclusion

[57] The Grievance is allowed.

[58] I remain seized to address the question of remedy for this breach, should the parties be unable to agree.

[59] I also remain seized to address any questions relating to the implementation of this Award and to correct any errors or omissions to give it its intended effect.



August 30, 2023

CHERYL YINGST BARTEL

ARBITRATOR