CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 4883-SUPP

Heard in Calgary, April 9, 2024

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The application of the remedy ordered by the Arbitrator in CROA 4883.

THE JOINT STATEMENT OF ISSUE:

In CROA 4883 the Arbitrator ordered as follows: "… that the Yard Crew who should have received a call to perform the work in question be paid the compensation which they would have received, had they performed this work for two hours. If this direction results in payment for a minimum number of hours to that Yard Crew (more than the work itself would have taken), then that is to be considered a result of the remedy ordered."

The Union's position is that each member of the Yard Crew identified as described in the Arbitrator's award must be paid a minimum of eight hours, which is defined as a Basic Day in Article 77 of Agreement 4.3.

The Company's position is that as per the language in Article 77, a basic day could be eight hours or less. Therefore, in this case the crew should be entitled to 2 hours of pay.

FOR THE UNION:	**FOR THE COMPANY:**
(SGD.) R. S. Donegan	**(SGD.) R. Singh**
General Chairperson	(for) D.K. – Senior VP Human Resources

There appeared on behalf of the Company:

R. K. Singh	– Labour Relations Manager, Vancouver
S. Fusco	– Senior Manager, Labour Relations, Edmonton
M. Ikram	– Labour Relations Manager, Edmonton

And on behalf of the Union:

R. Church	– Counsel, Caley Wray, Toronto
R. S. Donegan	– General Chairperson, CTY-W, Saskatoon
J. W. Thorbjornsen	– Vice General Chairperson, CTY-W, Saskatoon
M. Anderson	– Vice General Chairperson, Edmonton

SUPPLEMENTAL AWARD OF THE ARBITRATOR

[1] On February 9, 2024, **CROA 4883** was issued**.** That Award resolved the issue of an appropriate remedy for the Company's breach of Article 83A of Agreement 4.3, relating to Conductor Only work in Western Canada. In that case, the breach was admitted: A Conductor Only crew had inappropriately been assigned work they should not have performed. It was determined in **CROA 4883** that the work improperly performed took approximately two hours to complete, and that it should have been assigned to a yard crew that day, and not the Grievor. It was also determined that a monetary remedy was appropriate to put the Union in the position it should have been in had the Collective Agreement been followed.

[2] **CROA 4883** ordered:

> …that the Yard Crew that should have received a call to perform the work in question be paid the compensation which they would have received, had they performed this work for two hours. If this direction results in payment for a minimum number of hours to that Yard Crew (more than the work itself would have taken), then that is to be considered a result of the remedy ordered.

[3] The amount of that remedy was remitted to the parties and jurisdiction was retained to resolve that issue if the parties were unable to agree. Since that Award, the parties have met and discussed the amount of that payment, but have been unable to reach a resolve. They have brought the matter back to this Office for determination.

[4] As noted in the JSI, the Union maintains that each member of the Yard Crew should be paid a minimum of eight hours' pay, which is a "Basic Day" under Article 77 of the Agreement. The Company noted that under Article 77, a basic day could be eight hours 'or less' and that two hours of pay was owed.

[5] The resolution of this issue does not depend on an interpretation of Article 77. The remedy in the Award was intended to place the Union into the position it would have been in, had the Collective Agreement not been breached.

[6] That raises the question of whether there *was* a Yard Crew working, who could have been assigned this work. When questioned at the hearing, the parties assumed Yard Crews were working, since this was the Vancouver yard, which is a busy yard.

[7] Neither party provided evidence of whether yard crews were in fact working at the time of the infraction, although in answer to that question from this Arbitrator at the hearing, it was anticipated yard crews *would* be working, as this was the Vancouver yard, however neither party provided evidence regarding that question.

[8] As that evidence was not filed, at this hearing, evidence was sought by this Arbitrator of whether there *was* a yard crew on duty at the time of the infraction that could have been assigned the disputed work. That evidence was sought under Article 13 of the CROA Agreement, which provides to Arbitrators of this Office a unique ability to "make such investigation as he/she deems proper" and may "…receive, hear, request and consider any evidence which he/she may consider relevant". This was relevant evidence required to resolve this question, rather than making that determination in the abstract.

[9] The Company subsequently provided evidence of the yard crews working at the appropriate time, providing screen shots of those crews. The Union responded that this evidence did not demonstrate that there were yard crews who had the *capacity* or *available time* to do the work that was performed by the Grievor, so a remedy of only two hours would not reflect the "make whole" remedy ordered, and a yard crew would have had to be called in, with a minimum day's pay.

[10] Given that the very question asked of the Company was whether there *were* yard crews on duty who could have performed this work, and given the response of the Company to that question, I am satisfied the answer of the Company demonstrates there *were* yard crews who could have been assigned the work inappropriately performed by the Grievor that day. I am therefore satisfied that it would not have been necessary to *call in* a yard crew to perform the work that was done by the Grievor.

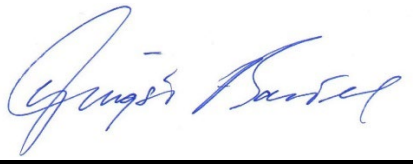
[11] As a remedy, the Company is directed to pay to the Union an amount equivalent to the payment that would have been owing to each member of one Yard Crew for two hours of work on March 9, 2021, as if one Yard Crew had properly assigned the disputed work on March 9, 2021, instead of the Grievor's Conductor Only crew.

[12] As the Company will be required to pay for the work twice: once to the Grievor and again to a Yard Crew, I consider that this will have the deterrent effect noted in **CROA 4883**.

[13] The Union can determine whether – and if so, how – that amount is to be divided amongst the yard crews on duty that day.

[14] Should the parties be unable to agree on that amount, either party can approach the Office for a conference call, with evidence of what one Yard Crew would have been paid for two hours work on March 9, 2021, or the amount will be set by this Arbitrator.

I retain jurisdiction to correct any errors and address any omissions to give this Award its intended effect.



May 17, 2024

CHERYL YINGST BARTEL
ARBITRATOR