

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

**CASE NO. 5049**

Heard in Edmonton, June 11, 2024

Concerning

**CANADIAN NATIONAL RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

The allegation that the Company is in violation of Articles 6.5, 85 of the 4.16 Collective Agreement along with the Extended Run Principles when Conductor Mazerolle was not notified of the point to where he was being called on November 5, 2015.

**JOINT STATEMENT OF ISSUE:**

On November 5, 2015 Conductor Mazerolle, was ordered for Train M31841 03. Conductor Mazerolle was advised by the crew dispatcher that he would be riding Q101 to get the train and to call the Chief for further instructions as the crew dispatcher did not know the point/location to which Conductor Mazerolle would be meeting the train.

Conductor Mazerolle claimed a total of 609 on his working ticket. In addition to the work he performed, Conductor Mazerolle claimed 528 constructive miles from Laforest to Hornepayne and back to Laforest. The pay office recovered the 609 miles and compensated Conductor Mazerolle 124.58 miles for his tour of duty.

The Union filed a grievance, claiming Conductor Mazerolle was entitled to the additional 528 constructive miles, as he was not advised of the point for which called at the time of his call. The Company declined the Union's grievance.

**The Union's Position:**

The Union submits the Company was in violation of Articles 6.5 and 85 of the 4.16 Collective Agreement along with Extended Run Principles when they failed to give Conductor Mazerolle a proper call for train 318 on November 5, 2015. The Union further submits that the Company is in violation of arbitral jurisprudence.

The Union contends that Conductor Mazerolle was ordered for a relief train and as such it was incumbent upon the Company to give him the notification as to the point to which he is called.

The Union is seeking to have Conductor Mazerolle paid the claim of \$947.84 which he claimed for the constructive miles from Capreol to Hornepayne and return to point at which he took control of the train.

The Union further seeks to have Conductor Mazerolle made whole in this instance given the blatant violation of the Collective Agreement, that a Remedy under the provisions of Addendum 123 be applied.

The Company's Position:

The Company disagrees with the Union's position. It is the Company's position that Mr. Mazerolle was properly compensated for the work performed and that there was no violation of the Collective Agreement or the Extended Run Principles. The Company does not agree that a Remedy is applicable; given there is no agreement that the Collective Agreement was violated.

**For the Union:****(SGD.) J. Lennie**

General Chairperson, CTY-C

**For the Company:****(SGD.) V. Paquet**

Manager Labour Relations

There appeared on behalf of the Company:

- |              |  |
|--------------|--|
| R. Singh     | - Labour Relations Manager, Vancouver  |
| F. Daignault | - Director, Labour Relations, Montreal |
| L. Dodd      | - Labour Relations Manager, Winnipeg   |

And on behalf of the Union:

- |             |   |
|-------------|---|
| K. Stuebing | - Counsel, Caley Wray, Toronto                |
| J. Lennie   | - General Chairperson, CTY-C, Hamilton        |
| G. Gower    | - Vice General Chairperson, CTY-C, Brockville |
| E. Page     | - Vice General Chairperson, CTY-C, Hamilton   |

**AWARD OF THE ARBITRATOR**

- [1] The Grievor claimed Constructive Miles for his service on November 5, 2015, which is significantly more than the Basic Day of pay the Company maintains was his proper pay. The Company disallowed this Claim.
- [2] This Grievance raises an issue of interpretation, relating to the manner in which the Grievor was called to service. The issue between the parties is whether the Company was required to comply with the provisions of Article 6.5 for this assignment and - if it was - whether the Grievor is entitled to be paid the Constructive Miles, as claimed, for that service.
- [3] For the reasons which follow, the Grievance is dismissed. The M318 qualifies as a "regular train number" under Article 6.5(Note)(b). Therefore, the Company was not required to provide to the Grievor the point at which called or whether he was operating in straightaway or turnaround service. The Grievor was paid the appropriate amount owing for the services he performed, as required by Article 6.1.

## **Collective Agreement Provisions**

### **Article 6.1(b)**

The following shall constitute the basic day:

(b) in freight service, 100 miles or less, 8 hours or less (straight-away or turnaround).

### **Article 6.5**

Employees will be notified, when called (as provided by Article 61), whether the tour of duty for which they are being called is in straight-away or turnaround service and they will be compensated according to such notification. Such notification will include the point for which called and will only be altered where necessitated by circumstances unforeseen at the time of call, such as accident, engine failure, snow blockade or other life emergency.

**Note: The requirement for inclusion of the point for which called as provided by paragraph 6.5 will not apply to the following:**

- (a) regular assignments;
- (b) **when regular train numbers are given;**
- (c) when called for a regular subdivisional run;
- (d) when called for work train service; unless necessitated by circumstances which could not be foreseen at the time calls are made, such as accident, engine failure, washout, snow blockade or other such like emergency. <sup>1</sup>

### **Article 6.6**

Employees in freight service will be called for straight away service where the distance from the initial terminal to the turn-around point is 100 miles or greater.

### **Extended Run Principles Q/A**

Q6. When called to deadhead when where [sic] does the 100 mile penalty cease?

A. As prescribed by article 18.8 of Agreement 4.16 (U.T.U.) and articles 25.7 of Agreement 1.1 (B. of L.E.)

Q8. How is my held away time affected if I am called and cancelled at the away-from-home terminal?

A. if called and cancelled at the away-from-home terminal, employees will maintain their relative standing and the following will apply:

a) if entitled to 50 miles all time will be used in the calculation of held time.

Example 1: an employee has been at the away-from-home terminal for 4 hours, is called and 1 hour later cancelled prior to reporting for duty, remains at the away-from-home terminal an additional 5 hours – total held time 10 hours.

---

<sup>1</sup> Emphasis Added

Example 2: an employee has been at the away-from-home terminal for 4 hours, is called and 1 hour after reporting for duty, without performing work (turning a wheel), is cancelled, remains at the away-from-home terminal an additional 5 hours – total held time 10 hours.

b) if entitled to 100 miles all time on duty will not be counted in the calculation of the total held away time.

Example 1: an employees has been at the away-from-home terminal 4 hours, is called and 1 hour later, after performing work (turning a wheel) is cancelled, remains at the away-from-home terminal an additional 5 hours – total held time 9 hours.

c) should an employee after being canceled, book rest, such employee's held away "clock" will start at zero (0).

Note: this does not apply in the application of Mandatory Rest.

Q15. If called in extended run service and my call is altered after reporting for duty what compensation am I entitled to?

A. Under the extended run principles you would be entitled to constructive miles or actual earnings, whichever is greater.

**56.1** At locations where necessitated by operational requirements, road, and/or yard and/or joint spare boards will be maintained.

**56.2** Except as otherwise provided in this Article, employees on spare boards will be run first-in first-out. Employees:

(a) standing first-out in the spareboard rotation at calling time who make themselves unavailable or who miss calls for a vacancy (or vacancies) for which called will be held off the board for 12 hours which will commence at the calling time and, at the expiry of 12 hours, will be placed at the bottom of the spareboard;

(b) who are not first-out in the spare board rotation at calling time and who miss calls as a result of the actions of those employees described in sub-paragraph (a) hereof will not be penalized as provided therein but will be placed at the bottom of the spare board, as of the calling time and, if more than one employee is involved, in the same order in which called.

### **Article 85.5**

Management agrees it must exercise its rights reasonably. Management maintains it ensures a harassment free workplace environment.

### **Facts**

[4] While this is a Grievance involving interpretation of the CA, some background context is required to situate the issue.

- [5] The Grievor was a Brakeman spareboard employee. This allowed him to work any service required.
- [6] All train assignments are made by direction of East or West. All trains with an *even* number travel in a Eastward direction. All trains with an *odd* number travel in a Westward direction. The Train Number itself is therefore capable of providing information regarding the Train, if a certain train number operates between particular locations consistently.
- [7] On occasion, a train must be “rescued”. This means a crew operating the train has been stopped outside of a terminal, along that Train’s route, whether due to crew rest requirements, break down, or other reasons. A different crew must be called to relieve that crew – to “rescue” that train, and operate it the rest of the way into a terminal.
- [8] A “rescue” assignment is considered as turnaround service, unless it meets the criteria in Article 6.6 regarding distance.
- [9] On November 5, 2015, the Grievor was called by Crew Management personnel to work “rescue 318” (train RM31841-03), ordered for 0900. Dispatch informed the Grievor he would be deadheading on Train 101 and that he was to call the chief for further instructions upon his arrival at Capreol.
- [10] The Grievor is very familiar with Train M318. Since 2015, the Grievor has worked M318 on 16 occasions, two of which were to “rescue” this train, in turnaround service. From 2013 to 2021, the Grievor worked on assignment M318 on 65 occasions, and rescued Train M318 a total of 10 times.

### **Arguments**

- [11] The Union noted this is one of many similar Grievances that have been filed regarding this issue.
- [12] It maintained the Company breached the Collective Agreement (the “CA”) and specifically Article 6.5, by not providing to the Grievor - at the time of his call - the point at which he was to meet the train (which was unknown at that time, since the crew assigned was still operating it Eastward), and whether he would be operating in turnaround or straightaway service.

- [13] It argued the Company did so to operate the incoming crew as far as it could, and avoid paying the new crew for mileage it did not ultimately work. It argued this breached the Collective Agreement and resulted in the Grievor becoming entitled to Constructive Miles under the Extended Run (“ER”) Principles, since this was a train operating in ER Service.
- [14] It was the Union’s position the Company had the burden to bring itself within the exception of the Note under Article 6.5 and had not met that burden.
- [15] For its part, the Company conceded the Grievor was not told the point at which he was to commence work, but argued that Article 6.5(Note)(b) applied. Its position was Train M318 was a “regular” or “core” train, which operated along the same route consistently, and that the Grievor was given a “regular train number” as required by the exception. It argued this relieved the Company of giving the details which the Union argued were missing, and that the Grievor was appropriately paid a Basic Day for his 3.5 hours of service, in accordance with Article 6.1(b).

### **Analysis and Decision**

- [16] The principles of contract interpretation were recently canvassed by this Arbitrator in **CROA 4884**. They will be relied upon - although not repeated - here.
- [17] In summary, the modern principle of interpretation requires that effect be given to the “plain and ordinary meaning” of the words the parties chose to record their deal. An Arbitrator has no jurisdiction to ‘read in’ other words to reach a different result.
- [18] An Arbitrator must also be alive to the “factual context” which - since 2014<sup>2</sup> - is also known as the “surrounding circumstances”. These are undisputed facts in existence at the time a collective agreement was negotiated.
- [19] The parties were agreed there is very little jurisprudence regarding the meaning of Article 6.5.

---

<sup>2</sup> With the decision of the Supreme Court of Canada in *Sattva Capital Corp. v. Creston Molly Corp.* 2014 SCC 53.

- [20] On a “plain and ordinary” reading, Article 6.5 (Note) exempts the Company from providing the information the Union states was required, in certain situations. One of those situations is where a “regular train number” is given: Article 6.5 (Note)(b).
- [21] The parties disagreed on whether this requirement was met, and in particular on whether Train M318 was a “regular” train.
- [22] The first question to be determined therefore is whether the Grievor was given a “regular train number” when he was called to rescue Train M318. If he was, then the Company is exempted from the requirement to give the details the Union seeks by Article 6.5(Note)(b) and the Grievance cannot succeed. If the Grievor was *not* given a “regular train number”, then a determination must be made of the consequences for the Grievor not receiving the information required by Article 6.5.
- [23] There is no definition of what a “regular” train *is*, in this Collective Agreement. It is a principle of interpretation that - where a word is not defined and a specialized meaning has not been established for a particular industry - the dictionary definition can be used as a helpful tool to determine meaning.
- [24] In **CROA 4835**, this Arbitrator considered the meaning of the term “regular” when no definition existed in the collective agreement. In that case, it was held:
- The Merriam-Webster Dictionary defines the word “regular” as “constituted, conducted, scheduled, or done in conformity with established or prescribed usages, rules or discipline.”<sup>3</sup>
- [25] The Union argued that the Grievor was not given a “regular train number”, as this was a “rescue” assignment, so it was not a “regular train”, even if Train 318 normally or regularly traveled the same route.
- [26] The Company has established in its evidence that Train 318 operates consistently on a prescribed schedule, in an Eastwardly direction, between Winnipeg and Toronto. It is scheduled and established on that route.

---

<sup>3</sup> At para. 47.

- [27] The “rescue” relates to the *type* of assignment it is; it does not change the underlying character *of the train* as reflected by its assigned “number”. It is not the “assignment” number that is referred to in Article 6.5(Note)(b), but the “*train* number”. The “rescue” assignment was given a number which *included* the train number - “318” - which was this Train’s number. That “number” does not change because that Train may be required to be rescued - perhaps more than one time - along its journey.
- [28] I am therefore satisfied Train M318 meets the definition of a “regular” train number, as that term is used in Article 6.5.
- [29] While the Union has argued the Grievor did not have any information regarding what his assignment would be - and that Article 6.5 was negotiated to provide greater stability for these types of situations and prepare for these types of assignments - that argument is not persuasive.
- [30] The Grievor did not lack essential information to prepare for this assignment. With the information he was given - including the “regular train number” - I am satisfied the Grievor knew several details regarding this assignment:
- a. The Grievor was aware from the Train number given that Train M318 was operating between Winnipeg and Toronto;
  - b. From it being an even number, the Grievor was also aware it was traveling in an Eastwardly direction, along its route.
  - c. The Grievor was also instructed to deadhead *on Train 101* to meet the train. That meant the Grievor would be traveling in a *westwardly* direction from his current location - on an odd numbered train.
  - d. The Grievor was therefore aware that his *own* location was *eastward* of where the Train was on its journey.
  - e. I am also satisfied that the Grievor was aware he had to “meet” this Train, and to then operate it *forward* or *Eastward* towards the terminal, as that is the nature of a “rescue” assignment in this industry.
  - f. The Grievor was further required to contact the Chief upon his arrival at Capreol, which meant the Train was *west* of Capreol, further narrowing the Train’s location.
  - g. I am satisfied that that the Grievor would understand that a “rescue” was - by its nature - a “turnaround” assignment that would require him to report to point A (Capreol), go to point B (West of Capreol) to meet the Train and bring the train back to point A (Capreol), which is the nature of a turnaround assignment.



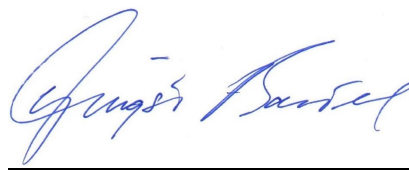
- h. Having rescued Train M318 on numerous occasions, he would have had an awareness of what was involved in this assignment.

[31] As the Company has established that Train M318 met the requirements of a “regular train number”, it has met its burden of proof to establish it was excepted from the requirement to provide the specific information the Union maintained was missing.

[32] The Grievance is dismissed.

I remain seized with jurisdiction to resolve any questions regarding the implementation or application of this decision; to correct any errors; and to address any omissions to give it the intended effect.

July 24, 2024



**CHERYL YINGST BARTEL**  
**ARBITRATOR**

