CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 5120

Heard in Calgary, January 14, 2025

Concerning

BOMBARDIER TRANSPORT CANADA INC.

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The Company not paying travel compensation for employees working out of other than their home terminal/location as provided in Articles 15, 75 and 78.

JOINT STATEMENT OF ISSUE:

On April 23, 2023, Locomotive Engineer Marc Tremblay sent in a bid, as per Article 78 of the Collective Agreement for the Spring General Ad. His seniority allowed him to hold assignment VAU006 in Vaudreuil, starting May 1, 2023.

Mr. Tremblay submitted his bid as per the note attached to Article 75.18 and submitted a total of 18 choices. His seniority position when bidding was number 17 on the Locomotive Engineer seniority list.

His Home Terminal was Saint Antoine but was awarded Assignment VAU006 in Vaudreuil, Mr. Tremblay as well as other employees under the same position have not received any travel compensation.

UNION'S POSITION:

For all the reasons and submissions set forth in the Union's grievance which are herein adopted, the Union stands by its' positions as presented in our grievances.

The Union believes the noted Articles/payment to Mr. Tremblay have been violated. As shown, Mr. Tremblay provided enough choices as provided in Article 78.01, 75.18 and the noted example within the language. Based on this example Mr. Tremblay met its requirement and as shown he should be eligible for travel compensation as noted below;

Note: *Each employee is responsible to keep their Permanent Vacancy Bid form updated at all times.* ***Employees must ensure that they select a minimum number of bids according to their seniority rank*** *(e.g. 30th on the seniority list must result in a minimum of 30 choices) on their form* ***to ensure placement otherwise Article 15 will not apply****. This responsibility also applies when an employee is absent during the advertising of new assignments. All abolishment and re-advertisement of assignments will be posted.* (emphasis added)

The Company in their grievance denials have positioned themselves where they use where an employee provides **insufficient choices** (this is not the case) and "The Company does not agree with the Union's position, as we believe that the interpretation that the Union is applying to Article 75.18 is clearly not the intentions negotiated. The reference of Article 15 is used in case of an employee who would have complied with Article 75.18, **meaning that he did submit enough assignments on his form but somehow was not able to get a placement**. In that specific situation he then would be able to benefit from Article 15, because the employee would be forced to work on an assignment which he did not bid on." (emphasis added)

Simply put the Company positions are either incorrect or as highlighted above do not apply/make sense, if the employee as per the example within the Article and exactly what Mr. Tremblay did (provided sufficient choices per his seniority) they must receive travel compensation. There can be no doubt that Mr. Tremblay fulfilled the requirements of all Articles and would be entitled to travel compensation as per Article 15.

The Union is seeking a declaration of a violation of the foregoing; an order directing the Company to comply with the provisions of the Collective Agreement, compensate Mr. Tremblay all entitled travel compensation (as well as all employees who also fall into this same violation), and such other relief as the Arbitrator sees fit in these circumstances.

COMPANY'S POSITION:

The Company disagrees and denies the Union's request.

The Company believes that the interpretation that the Union is applying in Article 75.18 is clearly not the intention as negotiated.

As provide in our Step 3 response, 'the reference to Article 15 is used in case an employee who would have complied with Article 75.18, meaning that he did submit enough assignments on his form but somehow was not able to get a placement. In that specific situation he then would be able to benefit from Article 15, because the employee would be forced to work on an assignment which he did not bid on'.

The remark at the end of the Article 75.18, was added to avoid the bad faith of an employee who may try to get forced on an assignment and therefore to claim mileage compensation as per Article 15 when, on purpose, he did not submit enough choices on his bid.

For the Union:
(SGD.) W. Apsey
General Chairperson

For the Company:
(SGD.) A. Ignas
Industrial Relation Lead - Canada

There appeared on behalf of the Company:

C. Trudeau	– Counsel, Fasken, Montreal
A. Ignas	– Industrial Relations Lead, Toronto
C. Henripin	– Human Resources Business Partner, Montreal

And on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
D. Psichogios	– General Chairperson, CTY-E, Montreal
M. Tremblay	– Local Chairperson, Montreal

AWARD OF THE ARBITRATOR

Background & Issue

[1] The Grievor is a Locomotive Engineer. The Company is the successor employer to Bombardier Transport. This Grievance arose while Bombardier was the employer.

[2] As noted in the JSI, the Union filed a Grievance for Travel Compensation, after the Grievor was assigned to a position in the Spring General Ad which required him to travel for that assignment. The Company denied that compensation.

[3] This Grievance was filed alleging breach of the Agreement. This Grievance was filed at the first step by the Grievor as the Local Chairperson of the Union, on his own behalf and on behalf of all other bargaining unit members similarly situated. The second step was filed by the General Chairperson of the Union.

[4] The broad issue in this Grievance is whether the Grievor is entitled to Travel Compensation under Article 15.05. For the reasons which follow, the Grievance is dismissed. I am satisfied that Article 15.05 applies to Maintenance employees only and not to the Grievor.

Relevant Agreement Provisions

[5] The Union relied on Article 15.05 and the "Note" to Article 75.18, in support of its position that the Agreement had been breached.

> **Article 15 Travel Compensation/Allowances/Other Premiums**
>
> 15.05 When the employee completes his standing application, he may elect to indicate his choice of the sites closest to his home address in order to qualify for mileage payment. Following the assignment of his position, if the employee is not assigned one of the 3 sites closest to his home address due to seniority, the difference in mileage between the site furthest from his home address and the work site, based on the result of the standing application, will be paid for the one-way trip only. The employee will be eligible for this allowance during the normal work week and not when volunteering for overtime outside his normal work week.
>
> Employees who do not indicate their choice of sites based on the forgoing, do not qualify for mileage payment. (Maintenance Only).

Article 75 Filling of Vacancies

75.18 Should a PV [Permanent Vacancy] not filled by bid; the junior qualified employee would be forced onto the PV. The provisions of Article 15 will apply.

…

Note: Each employee is responsible to keep their Permanent Vacancy Bid form updated at all times. Employees must ensure that they select a minimum number of bids according to their seniority rank (e.g. 30th on the seniority list must result in a minimum of 30 choices) on their form to ensure placement otherwise Article 15 will not apply. This responsibility also applies when an employee is absent during the advertising of new assignments. All abolishment and re-advertisement of assignments will be posted.

Analysis and Decision

[6] This is a contract interpretation dispute. It places into issue the appropriate interpretation of Articles 15.05 and 75.18 of the Collective Agreement.

[7] A contract interpretation question requires that the Arbitrator apply the "modern principle of interpretation" as described in **CROA 4884**. The analysis of that principle in that case is adopted – although not repeated - here.

[8] What an Arbitrator must do in an interpretive exercise is make a determination of what the parties' "mutual and objective intentions" are, by giving the words the parties used to "ink their deal" a "plain and ordinary meaning". That must be undertaken in a manner which allows all contractual terms to work together harmoniously, consistent with the relevant "surrounding circumstances", which are undisputed facts from when the contract was negotiated. It is also assumed by Arbitrators that the parties intended all words to have meaning; and any specialized meanings in the industry are also applied.

[9] The relevant facts are not in dispute. The Grievor provided 18 choices at the change of card, as he was required to do, given his seniority level of 17th. He was offered – and accepted – his 9th choice at Vaudreuil. His Home Terminal was Saint Antoine.

[10] While the exact distance at issue is in dispute, that issue need not be resolved for the purposes of resolving this Grievance. The Grievor maintained he was owed travel compensation and alleged the Company denied that compensation. The Grievor

completed his bid package in French. This Collective Agreement also had a French and English version.

[11] It was the Union's position that the first paragraph of 15.05 was located within a section described as the "Common Provisions – Applicable to All Crafts" section of the Collective Agreement and so it applied to both crafts. It argued that the "Maintenance Only" limitation in that clause – which was located in parentheses at the end of the last sentence - did not apply to the *entire* Article, but only to that *last* sentence. It was the Union's position that the Grievor met the preconditions for the application of Article 15.05. It argued he provided the correct number of choices and was not assigned one of the three sites closest to his home address as noted in Article 15.05, so should receive travel compensation. It further argued its position was supported by the "note" in Article 75.18, which – in its view – set out when Article 15 was "not" to apply. It argued the Grievor *had* provided enough choices for Article 75.18 to apply. It argued the preconditions for the application of Article 15.05 were therefore "met" by the Grievor.

[12] The Company maintained that Article 15.05 only applied to Maintenance employees, pointing to the limitation in parentheses including in that Article, which it maintained applied to the *entire* Article and not just to the last sentence. It pointed out that in its Step 2 Grievance, the Union had already conceded that Article 15.05 applied to only *Maintenance* employees and not *Operating* employees. It argued the placement of the limitation of "Maintenance Only" after the last sentence was only a formatting issue and was not substantive, relying on the French version in support of its position, which contained all of the wording in one paragraph, and the limitation of its application to only "Maintenance" employees at the end of the entire long paragraph. It also pointed out that other sub-Articles of Article 15 which *did* apply to Operations employees only provided travel compensation to operating employees in situations where it was *the Company* who "required" the employee to either protect the assignment or attend training or familiarization, or was "required" to work in a different location. Its position was that Article 75.18 only applied to employees who were "forced" to a position; not an employee who was assigned to one of his or her choices. It argued the "Note" in that Article only clarified that such an employee had to offer the same number of choices as seniority level to claim the travel compensation, so that an employee could not manipulate being "forced", to

claim that compensation. The Company also took issue with the distances relied on by the Union in its submissions.

[13] The French version of the Collective Agreement is appropriately reviewed, however, how the contract was implemented prior to the last round of bargaining – and the bargaining notes - are not relevant, given that the contract has not been found to be ambiguous. That evidence has not been reviewed or considered in reaching this conclusion.

[14] The Union bears the burden to establish the Collective Agreement has been breached. For the following reasons, that burden has not been met in this case.

[15] The main thrust of the Union's argument at the hearing was that Article 15.05 applied to operating employees. I cannot agree that is the case, nor can I agree that Article 75.18 is of any assistance to the Union on these facts. While the Union argued that the limitation to maintenance employees in Article 15.05 only applied to the second sentence – since that limitation was placed *after* that second sentence - I cannot agree with the Union that the mutual and objective intention of the parties was that narrow. I am satisfied from a review of the appliable evidence that the parties' mutual and objective intention was that Article 15.05 – as a whole - applied to "Maintenance" employees "*only*" and not to "operating" employees. I am further convinced that the Union had *conceded* that application in its Step 2 Grievance response, which was dated May 25, 2023.

[16] In this expedited process, an Arbitrator is entitled to rely on Grievance documentation. In the Step One Grievance, the Grievor relied on Article 75.18 for the entitlement to travel compensation, and not on Article 15.05. In fact, the Union stated that Article 75.18 was intended to be for Operating employees *what Article 15.05 provided to Maintenance employees.* The Grievor – who was speaking for the Union - stated "*I have not yet been paid my mileage* ***as per the note added to article 75.18****…I would like to point out that this is the language that the company supplied during the negotiations [sic] of the latest collective agreement,* ***similar to article 15.05 for maintenance employees****"* (emphasis added).

[17] At this Step of the Grievance, it was the Union's position that Article 75.18 gave gave to Operating employees similar compensation as was given to Maintenance employees in in Article 15.05.

[18] That position is a relevant consideration.

[19] Second, I cannot agree with the Union's logic that a limitation placed at the "end" of an Article can only impact what appears immediately before it. The example relied on by the Union in Article 24 is not an example of that situation. For that Article, the phrase is placed after the first clause; not after the second. In that situation, the fact that the limitation only applies to the first section is readily apparent, given its placement in the middle of the Article, after the first section and before the second.

[20] That is not a situation where a limitation was placed after *both* paragraphs, so I cannot agree it sheds any light on this question.

[21] Third, the Union's position of a narrow application for the limitation makes no logical or rational sense. The clause immediately before the term "Maintenance Only" is one which *clarifies* the obligation under the first part of Article 15.05. The Union provided no logical or understandable rationale for its position of why only maintenance employees would have been subject to that clarification and not operating employees – under its interpretation - nor do I find that position persuasive given the subject matter of the first part of that clause.

[22] Turning to the two different language versions to support that the limitation applied to the entire Article 15.05 – and not just the last sentence - the Company argued that the French version in fact runs the two sections together, with the limitation of "Maintenance Only" application located at the end of that one large paragraph, making it clear it applies to the entire paragraph. While this Arbitrator did not speak French, a simple review of that clause in the French version clearly shows that there is only one long paragraph. There is no division between the first section and the last sentence. The limitation of the application to maintenance only was noted at the very end, in the French version.

[23] This is not a case where the phrasing appears in one language version, but does not appear in the other. That would create a "conflict" between the versions where one

version would have to be preferred over the other. That is not this situation. In this case, there is a plausible and reasonable interpretation that can be applied to the English version, which would allow it to be read consistently with the French version. That interpretation is that the limitation applies to the entire Article.

[24] An interpretation which applies the limitation to the entire clause is also consistent internally. Seeking harmony between clauses and *within* a particular clause is a "canon of construction" for the application of "modern principle of interpretation".

[25] I am satisfied such an interpretation allows the Collective Agreement provisions in Article 15 to be read harmoniously and consistently, with other provisions in Article 15 which relate to Operating employees and travel compensation. This is because Article 15 only provides travel compensation to those operating employees who are either "*forced*" onto an assignment or are otherwise *required* by the Company to travel: Article 15.0 (employee called by the Company to "*protect an assignment away from their designated-on duty location…"*); Article 15.02 ("…*an employee from a regular assignment"* is required *"to work an assignment or to attend training or familiarization at other than their normal designated on duty location*").

[26] Article 15.03 further recognizes that an employee can be "required" to work at another terminal, and is then paid travel compensation.

[27] While the Union argued that Article 15.03 would apply to this Grievor, as he was "required" to work at another terminal, that interpretation is not supported by Article 75. Article 75.15 makes clear that by completing a Permanent Vacancy Bid Form (which lists an individual's choices) an individual "…*consents to be placed on their new assignment*" (emphasis added). An individual who "consents" is not an individual who is "forced" or "required" to work that assignment.

[28] For all of those reasons, I am satisfied the parties' mutual and objective intentions was that the entire Article 15.05 applied to Maintenance employees only.

[29] That leaves the interpretation of Article 75.18.

[30] I cannot agree that clauses support the Union's position. The Union by its argument has treated the "Note" as if it existed on its own as a separate sub-Article, confirming a

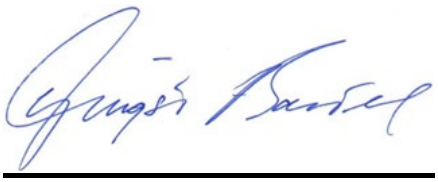
broad entitlement. I cannot agree that is the case. The "Note" appears within Article 75.18. I am satisfied the *subject matte*r of Article 75.18 - as made clear in the first sentence - is relevant to considering the application of the "Note" which follows within that section. The first sentence refers to employees who are "*forced*" to protect a permanent vacancy when it is "*not filled by bid*". I am satisfied from the placement of the "Note" *within* Article 75.18 and after that reference, that the "Note" serves to clarify the situation when Article 15 does not apply *to that particular sub-group of employees to which Article 75.18 applies*, rather than confirming a new and broad entitlement, as argued by the Union.

[31] The "Note" is meant to ensure that employees who are "forced" *"… select a minimum number of bids according to their seniority rank…otherwise Article 15 will not apply*". That sub-group of employees addressed in Article 75.18, cannot seek any travel compensation as operating employees who are "forced", unless they have included the appropriate number of "choices" on their bid form, which avoids any manipulation of an employee "choosing" to be "forced", to be able to claim travel compensation.

[32] For the above reasons, I am not satisfied that the Union has met its burden to establish the Collective Agreement has been breached. The Grievor was not entitled to Travel Compensation in these circumstances, as an Operating employee.

[33] The Grievance is dismissed.

I retain jurisdiction for any questions relating to the implementation of this Award; to correct any errors; and to address any omissions, to give this Award its intended effect.



April 16, 2025

CHERYL YINGST BARTEL
ARBITRATOR