CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 5125

Heard in Calgary, January 14, 2025

Concerning

VIA RAIL CANADA

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The application of the Addendum 5, T.C.R.C Agreement 1.4 (presently Addendum 4- Two (2) week Locomotive Engineer Training Program).

JOINT STATEMENT OF ISSUE:

The union contends that locomotive engineers attending their 14 Day Re-Certification Course are entitled to 4 days at 8 hours each at Over and Above their monthly guarantee for the day proceeding the course, Saturday and Sunday in the middle and the day following completion of the course as stipulated in the 'Compensation' portion of the Addendum. The Union requests that all locomotive engineers who have not been compensated as per the addendum be made whole.

The Corporation contends that the clear purpose of the Over and Above payments for days 1 and 14 of the training in Addendum 5 (now Addendum 4) are to allow the employees to travel to and from the recertification training. This was the clear intent when the addendum was negotiated between the parties and is more accurately reflected in the French version of the addendum. In the cases raised by the Union, the employees received their recertification training virtually and no travelling was undertaken, and therefore the purpose of the eight hours over and above on day one and 14 was no longer present.

For the Union:
(SGD.) P. Hope
General Chairperson

For the Company:
(SGD.) R. Coles
Senior Advisor, Employee Relations, Montreal

There appeared on behalf of the Company:

C. Trudeau	– Counsel, Fasken, Montreal
T. Drouin-Shannon	– Senior Employee Relations Advisor, Montreal

And on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
D. Dunn	– Vice General Chairperson, Brantford
T. Russett	– Senior Vice General Chairperson, Edmonton

K. James – General Chairperson, Edmonton
P. Hope – General Chairperson, Burlington

AWARD OF THE ARBITRATOR

Background Facts, Issue, Arguments & Summary

[1] This Grievance raised an issue of contract interpretation regarding an Addendum. The Addendum was first negotiated in 1999 and numbered as "Addendum #3" in the 2015-2017 Collective Agreement. It was titled "Locomotive Engineer Training Program 2 Week Course."

[2] That Addendum was in place between 1999 and 2016.

[3] In 2016, the parties renegotiated the Addendum and it was initially re-numbered Addendum #4. That Addendum was subsequently incorporated into the next Collective Agreement in 2018 (and renumbered to Addendum #5; but is referred to as Addendum #4 in this Award). That Addendum was titled "Two (2) Week Locomotive Engineer Training program".

[4] It is the interpretation of this revised Addendum #4 that has been placed into issue by this Grievance. That document is reproduced in full at the end of this Award.

[5] The training to which this disputed Addendum refers is for Locomotive Engineers ("LE's") and is mandated by Transport Canada. It must take place once every three years (the "Training Program"). The Training Program encompasses CROR re-certification, and other various types of training.

[6] It is not disputed that virtual training began as a result of the COVID19 pandemic in 2020. Prior to that time – including when the Addendum was negotiated in 2016 – attendance for the Training Program had always been "in-person".

[7] The issue in this Grievance is: Must LE's be paid for days 1 and 14 of the Training Program, "over and above" their monthly guarantee under Addendum #4, when they do not attend that training "in-person" but rather attend "virtually?

[8] For the reasons which follow, I am satisfied this question is appropriately answered as “yes”.

[9] The Grievance is upheld.

Facts & Arguments

[10] The following facts are accepted as undisputed and relevant “surrounding circumstances” for this interpretive dispute:

a. In this industry, the principle of a “40 hr week” was recognized in the Collective Agreement in 2015 and in 2018[1].
b. LE’s do not work a typical 9 to 5, Monday to Friday schedule. While LE’s have “rest” days, those days do not necessarily fall on a weekend but can occur on other days of the week, given the 24/7 nature of this industry.
c. The Training Program is extensive and must be completed by every LE, once every three years.
d. The “Rest Days” referred to in the Addendum may – or may not – fall on an LE’s “rest day”.
e. At the time of negotiation of the Addendum, the Training Program took place “in person” and not “virtually”.
f. Due to the pandemic in 2020, the manner in which the training was offered was changed to “virtual”, with some hybrid training also offered for First Aid.
g. Since 2020, the training has continued to be offered virtually, so the training is no longer “in person”.
h. LE’s are no longer required to travel to Montreal or Toronto for that portion of the two week training program.
i. The substantive “teaching” of the Training Program is held during two weekday weeks of Monday to Friday.
j. The weekend in the middle of the training are also “rest days” for the LE’s in that program;
k. The Union became aware in 2020 that the Company was not paying what the Union argued was the negotiated compensation for days 1 and 14 for the “virtual” training, since employees were no longer required to “travel” to attend that training.
l. On March 28, 2021, the Union filed this Grievance at Step 2.

[1] Article 3.1 of the 2016 CA; Article 8.1 of the 2018 CA which added the Addendum as No. 5.

[11] The arguments of the parties are straightforward.

[12] The Union argued that the parties negotiated the changes to this Addendum to standardize "rest days" for this training, given that there were issues with LE's scheduling their time to "maximize compensation" under the previous Addendum. It argued that days 1 and 14 were therefore incorporated as two "rest days" at the beginning and end of the Training Program to resolve that issue. It argued those days are properly compensated under the terms of the Addendum, whether or not travel to the training is required. It argued there is no limitation in the Addendum for compensation for days 1 and 14 of the training program only when LE's must "travel".

[13] The Company maintained that day 1 and 14 were negotiated to allow LE's to "*travel*" to and from the training. It argued that since LE's are no longer required to "*travel*" on those days - given the virtual platform for the training post-pandemic - no compensation for those two days at the beginning and end of the training is owed. It argued that as the Union is claiming compensation, the right to that compensation must be set out in clear and unequivocal terms, which it is not. It also argued the French version of the text supported its argument and more clearly set out that the purpose of days 1 and 14 was so LE"s could "travel". It argued the interpretation which allowed both versions to be read harmoniously should be preferred.

[14] In Reply, the Union argued the original LOU dated March 4, 2016 was negotiated in English and that the Union's negotiating members were anglophone and English is the "official" version. It argued the Company understood the purpose of the compensation is for "rest" given that the days are set out as "rest" days. It argued the second part of the Addendum abrogated the provisions of Article 8.6(a) and that the "over and above" payment provided for is "unconditional". It argued that to limit it to when LE's travel would be to "read in" a word. It argued it was the Company's request to renegotiate the Addendum, not the Union's request. It argued the Company had taken the emails provided by the Union out of context. It argued the parties' intention was to "streamline" the Compensation and Compensation is the category which significantly amended what had been agreed to in Addendum #3. It argued the intention was to standardize the Addendum "both for costs as well as administration" regarding the "rest days" as it was

open to LE's to "take Temporary Vacancies with the Rest Days in the middle of the week to maximize earnings" (para. 12). It argued that employees were on the course for 14 days. It pointed out a "roll call" is taken by the instructor and that an individual has to be "in attendance" to participate in the training. It distinguished the authorities offered by the Company.

[15] In Reply, the Company offered the recollection of Mr. Begin, regarding the negotiations leading to Addendum 4. It argued it was always the intention of the parties that the "over and above" payments for days 1 and 14 were because employees had to "*travel*" to the Training Program. It disagreed with the Union's argued intention. It argued the payment of rest days in the middle of the program were paid regardless of the residence of the engineer, but that "rule" did not apply to days 1 and 14. It also offered an email of Mr. Begin and information from Mr. Cooke regarding the pandemic period and the "blended" option available for "first aid". It argued the "vast majority" of students opted for a fully virtual training. It argued the Union had not provided any evidence that employees had to travel on days 1 and 14 of the Training Program, to "attend" it. It argued days 1 and 14 are rest days "before and after" the Training Program.

Analysis and Decision

[16] This dispute can be resolved by considering the *entirety* of the Addendum, as well as how Addendum #4 differs from Addendum #3.

[17] It is unnecessary – and would be improper – to consider evidence from the parties as to what the respective negotiators *thought* the clause meant, or to the positions of the parties stated *after* the Addendum was negotiated.

Legal Principles

[18] Both parties relied on the principles of contract interpretation to support their arguments, including as summarized in earlier Awards of this Arbitrator in **CROA 4884** and **4881**. The analysis in **CROA 4884** regarding that principle is fulsome and is adopted – but will not be repeated – here. To summarize, the "goal" of an interpretive exercise is to determine the parties' "mutual and objective intentions" at the time they entered into

the contract. This requires an arbitrator to apply a purposive and principled approach. It is the *entirety* of the Article or – in this case – the Addendum - that must be considered to glean the parties' objective and mutual intentions, rather than just words or phrases considered in isolation. As will become apparent as this Analysis develops, reading this Addendum as a "*whole*" within its specific factual context is key to resolving this Grievance.

[19] Evidence of a parties' *subjective* intentions - what a party maintained were the *reasons* why a particular clause was negotiated for example; or what problem the Article was meant to resolve which could only *be* resolved if its interpretation were correct - are inadmissible as irrelevant to that exercise, unless those reasons are undisputed and not controversial.

[20] Both parties provided subjective evidence in correspondence exchanged by them prior to the filing of the Grievance and summaries of the positions of their negotiations – well after the Addendum was negotiated - as to the meaning of the Addendum, and what negotiators felt they were negotiating, and the problem the changes to that document were meant to solve. The parties were not *ad idem* on these facts. That is evidence of the parties' *subjective* intentions. As noted by the Alberta Court of Appeal in *AUPE v. AHS*[2] and discussed in **CROA 4884**, this type of evidence is never admissible as it is irrelevant.

[21] While subjective intentions are irrelevant, and extrinsic evidence as to past practice under a contract can only be received in limited circumstances, Arbitrators do not make determinations of meaning in a vacuum. Rather, under the "modern principle", primacy is to be given to the "plain and ordinary meaning" of the words the parties *did* use to "ink their deal" (as previously described by this Arbitrator), which are considered within the factual context that then existed, and given any specialized meaning in the particular industry.

[22] Arbitrators follow several "canons of construction" to apply the "modern principle" of interpretation, such as "all words are intended to have meaning" and "when the parties used different words in the same Article, those words are presumed to have different

[2] 2020 ABCA 4

meanings". When a document has been amended, previous versions are also relevant to that exercise.

[23] However, it must also be recalled that an Arbitrator cannot *alter* or amend a Collective Agreement, or "read in" words that do not appear.

[24] As noted by this Arbitrator in **AH892**, it is not the prerogative of an Arbitrator to change the deal the parties reached through "means of a creative interpretation, whether to pursue her own interests of fairness or policy; or to give to a party flexibility which it did not bargain to receive".

[25] The Supreme Court has noted that "words alone do not have an immutable or absolute meaning"[3]. While arbitrators have long held that the "factual context" in which the contract was negotiated was relevant when interpreting collective agreements, as adjudicators, we were ahead of our time. In 2014, the Supreme Court clarified that the "surrounding circumstances" – or what arbitrators label "factual context" or "matrix" – must be considered when interpreting *any* contract.

[26] However, it further clarified that those facts are *limited in time and type*: It is only facts which are a) undisputed; b) known – or should reasonably have been known - to the parties at the time the contract was entered into; and c) which are "capable of affecting how a reasonable person would understand the language of the document"[4] which are relevant "surrounding circumstances" or "context". The Alberta Court of Appeal had occasion to apply the clarifications in *Sattva* to collective agreement interpretation in *AUPE v. AHS,* which has become a leading decision on that subject.

[27] In addition to clarifying what are "subjective" intentions, that Court also discussed the "general context" that should be considered by labour arbitrators when interpreting collective agreements:

> It is well established in labour law that labour arbitrators should consider evidence of the origin and purpose of the collective agreement, the nature of the relationship created by it and the industry in which the parties are operating, which it considers the general context within which collective agreements are negotiated…it has been recognized that arbitrators should be aware of the labour relations context, and the

[3] *Sattva Capital Corp v. Creston Moly Corp.* 2014 SCC 53 at para. 47 ("*Sattva*").
[4] As noted in *AUPE v. AHS, 2020 ABCA 4 at para. 25, when discussing the requirements of Sattva.*

> elements of policy and statutory goals within which the collective agreement is formed.. Other examples of what can be considered surrounding circumstances that labour arbitrators frequently consider include: prior arbitration awards, prior collective agreements, and the general bargaining context[5]

[28] Collective Agreements are drafted by lay people, as opposed to those who are legally trained. This distinguishes collective agreements from other types of commercial contracts. Such agreements are also regularly amended, which is also distinct from other types of contracts.

[29] Whether the agreement the parties reached in the Addendum is broad enough to cover a situation which was not anticipated by them at the time the contract was negotiated is always a matter of interpretation. That will depend on the wording that is used and the mutual and objective intentions that are found.

[30] That question is at the core of this Grievance.

Application to the Facts

[31] For the following reasons, I am satisfied Addendum #4 was not drafted to limit the word “attend” to “in-person” attendance when compensating days 1 and 14, as the Company argued.

[32] The document does not support that limited interpretation for the word “attend”.

[33] It is undisputed the training was not offered virtually in 2016 when Addendum #4 was negotiated. The COVID19 pandemic brought the reality of “virtual” training into this industry, as it did for other industries across the country, beginning in early 2020.

[34] That fact is not determinative. The question is the meaning to be given to the words the parties chose to use, in context.

[35] The parties stated in the first sentence of the Addendum #4 their intention for re-negotiating Addendum #3, which had then been in place for 17 years:

> The parties discussed and reviewed the two (2) week Locomotive Engineer (LE) training program **in a view to standardize the process.**

[5] At paras. 37, 38

[36] The parties' own statement of intention placed into Addendum #4 is relevant, that "standardization" was required. The Union's submissions set out the issue that it argued had been created by Addendum #3 for the parties, which needed to be "*standardized*" (at paras. 17-19 and 21 of its submissions). The Union's submissions on the problems which were in existence and which needed to be resolved is evidence of its *subjective* intentions regarding the Addendum; what the changes were meant to resolve.

[37] The Company has not agreed that this was the issue which was required to be "*standardized*". The Company also provided evidence of its own negotiator's intentions regarding whether travel was to be required.

[38] I am satisfied that all of this evidence is of the parties' subjective intentions regarding what the Addendum was meant to address; and the problem it was meant to solve, rather than undisputed and uncontroversial facts upon which the parties agree. As noted by the Court of Appeal in *AUPE v. AHS,* these type of "subjective" intentions are irrelevant to an interpretive exercise.

[39] To understand the Addendum, it is necessary to first review the provisions of the Collective Agreement.

[40] The parties recognized in Article 3.1 of the 2016 Agreement the "principle" of a 40 hour work week. This was also recognized in the 2018 Agreement. In the 2018 Agreement, that recognition is in Article 8.1. It is also recognized in both Agreements in Article 3.2/Article 8.2 that because of the "nature of the work", "the principle of averaging will be in accordance with the following formula": It is then noted in Article 3.2(a) of the 2016 Agreement and Article 8.2(a) of the 2018 Agreement that "*Locomotive engineers shall be paid a basic salary for each two-week period*".

[41] An example is then given for two periods of two weeks, totalling 160 hours (or 80 in each two week period, with four weeks are used to reach that average). LE's can work " in excess" of that "basic 160 hours" and Article 3.2(b)/Article 8.2(b) sets out how it is determined if pay at "time and one-half" for hours is owed for the excess of this "basic 160 hours". I am satisfied that this averaging to 160 hours is what is captured in Addendum #4 when the parties agreed that LE's would be paid for 80 hours for the

training, in the two week period. The Addendum states explicitly that the level of compensation for "*attending the training program*" will be paid "*for the 10 days occupied in training*" [emphasis added*],* which is the two 5 day weeks of Monday to Friday at 8 hours per day, being 40 hours for one week and 80 hours for two weeks, in keeping with the Collective Agreement recognition of 80 hours over a two week work period.

[42] A review of the history of Addendum #3 – the *process* that existed under that Addendum - is also relevant to determine what that process *was* and how that process was "*standardized*" in Addendum #4.

[43] Addendum #3 described the Training Program in the following terms:

> The Corporation has developed a comprehensive training program for locomotive engineers covering topics and re-qualifications for areas including CROR and QSOC, First Aid, COR, Emergency Response Procedures, Electronic Bearing Monitoring; Safety and Protective Devices and Troubleshooting (the "training program").
>
> The training program will last approximately two weeks and will take place at the Corporation's headquarters in Montreal and at the Montreal Maintenance Centre.
>
> All locomotive engineers' will attend the training program prior to their individual CROR and QSOC re-qualification date and every three years thereafter.
>
> Due to the special nature of this training program, the Corporation and the Union have met to discuss issues arising out of the training program and have reached an agreement as set out hereafter.
>
> [emphasis added]

[44] Ultimately there was also training that took place in Toronto (and not just in Montreal).

[45] This comprehensive description of the training program was not repeated by the parties in Addendum 4.

[46] Both Addendum #3 and Addendum #4 *did* provide for recovery of travel expenses. While Addendum #4 did not set out *where* the Training Program would physically take place as did Addendum #3, it did define locations for LE's ,which would be considered as "outside" and "inside" the "*training complex*" (the dividing distance was 80 km) for the purposes of recovery of expenses. It also addressed whether expenses would be

recoverable for an LE who chose to return home during the *middle* two days of the Training Program (the weekend in between).

[47] Appendix #3 did not address these issues. Addendum #4 refers to recovery of expenses for those individuals who were "outside the training location"; Addendum #3 referred to recovery of "expenses" but made no such distinction. Neither was it clear in Addendum #3 whether travel expenses would be covered if an LE chose to return home for the two "middle" rest days (the weekend in between). Addendum #4 provides clarity that such travel expenses were ***not*** covered.

[48] I am satisfied from a review of these Appendices that one way in which the "process" was "standardized" in Addendum #4 from #3 was that LE's would not be eligible to claim travel expenses for returning home during the "middle" weekend of the Training Program. It also standardized when LE's would be eligible for expenses for travel to and from the "training complex" (only those who lived more than 80 km from the training location were so entitled).

[49] The next question is how was *compensation* for those days addressed? Compensation for a "rest day" is distinct from recovery of "expenses".

[50] For that question, a further review of the Addendum is required.

[51] In Addendum #4, the parties set out the timetable for the Training Program under the title "Working assignment Rest [sic] days":

> It is understood that for purposes of replacing the Locomotive Engineer attending this training, the training program will be considered as a fourteen (14) day vacancy. The working assignment vacated will be advertised as a Temporary Vacancy in accordance with applicable rules.

[52] Without any further description, the parties then outlined the following:

> Day 1 – Sunday – Rest day
>
> Monday – Fridays – Training days
>
> Saturday-Sunday – Rest days
>
> Monday – Friday Training days

> Day 14 – Saturday – Rest day
>
> It is understood that Locomotive Engineer's attending this two (2) week training course will have their original work assignment altered to the training schedule for the duration of the program.

[53] I am satisfied that days 1 and 14 were considered by the parties to be part of this "two week" "14 Day" "Training Program".

[54] This section is set out in the Addendum immediately before the section entitled "Compensation". The section entitled "Compensation" is set out – in its entirety – below. It addressed compensation for *both* the classroom training and days 1 and 14.

[55] The first part addresses compensation for attending the classroom section of the training. It states:

> Locomotive engineers attending the training program will be compensated eight (8) productive hours per day for the ten (10) days occupied in training. The two (2) week period will equal eighty (80) productive hours of compensation at the rate of pay.
>
> Employees attending the training program are not eligible to over and above payments for time spent in classroom.
>
> In the event that the total compensated hours exceed 160 hours in a twenty-eight (28) day period, overtime payments will be applicable.

[56] The second part – and that which the Union emphasized – addresses the compensation to be paid for the "*rest days*" – both on days 1 and 14 and in the "*middl*e" weekend of the program. It stated:

> Locomotive engineers attending the training program shall be compensated eight (8) hours over and above the guarantee and counts toward the 8 rest days in the 28 period on day 1 and 14 of the program
>
> **Notwithstanding the residence location and for the purpose of standardizing the compensation process,** employees shall be compensated eight (8) hours over and above the guarantee *for each rests [sic] days in the middle of the training program schedule and counts toward the 8 rest days rest in the 28 day period*
>
> If Locomotive Engineer opts to work in the middle of the training program, he will be compensated accordingly to the assignment and will not be compensated 8 hours over and above the guarantee for the specific rest day.

[*emphasis added*]

[57] Two issues are addressed in this "*rest day*" section of the "Compensation" category: The compensation owing for Days 1 and 14; and the compensation owing for the "middle" two rest days (the middle weekend).

[58] While the phrasing of the first paragraph, above, is awkward and not grammatically correct, the labour relations context must be recalled: these are lay people negotiating these contracts, for the most part.

[59] I am satisfied the parties agreed to compensate LE's "*on day 1 and 14 of the program"* for "*eight hours over and above the guarantee*", and that these rest days "*counts towards the 8 rest days in the 28 day period"* under the Collective Agreement.

[60] There is no reference in this section to any *limitation* on that compensation, or any pre-condition that must be met for that compensation to be triggered other than the LE must "*attend*" the Training Program. There is no reference for "how" that attendance is to take place. While the Company argued that "attending" means "in-person" attendance and not "virtual" attendance, that raises the issue of whether the Addendum was drafted broadly enough to capture a situation that was not in existence at the time it was negotiated, which was a virtual format. I am satisfied it was.

[61] Upon review of the entirety of Addendum #4, I cannot agree the word "attend" limits compensation owing under this Addendum for days 1 and 14 to only compensation for "in-person" training. Compensation is distinct and different from recovery of *expenses* under the Addendum. Recovery of expenses ***does*** require travel. However, I am satisfied that "Compensation" the parties negotiated under this Addendum does not.

[62] This distinction is demonstrated by how the parties compensated the LE"s under Addendum #3. A review of that Addendum shows that the parties were alive to connecting a *travel* requirement to this *compensation,* but chose not to repeat that connection in Addendum #4. Appendix #3 provided for the following compensation for "rest days":

> Rest Days (heading "C")
>
> For each day of the Saturday and Sunday in the middle of the training program schedule, the Locomotive Engineers will be compensated as follows:
>
> If the day is their assigned workday, their guarantee or MOE will be protected, whichever is greater.
>
> If the day is their assigned rest day, they will be compensated for 8 hours over and above their guarantee or MOE, whichever is greater [*emphasis added*].

[63] Addendum #3 went on to state:

> Travel (heading "D")
>
> Locomotive engineers travelling to and from the program on their assigned workday will have their guarantee or MOE protected, whichever is greater.
>
> Locomotive engineers travelling to or from the program on their assigned rest days, will be paid 8 hours **per day travelled**, over and above their guarantee or MOE, whichever is greater. [emphasis added]

[64] It must be recalled the "Training Program" is defined in the Addendum to *include* days 1 and 14. These are not extraneous days to that Training Program. Nor are those days only listed for those LE's who must "travel" to attend the training.

[65] The parties were clearly alive to the need to "*travel"* to reach a training location. The parties were also alive to linking the need to "*travel*" and payment of compensation when that occurred, as evident from the language used in Addendum #3. Addendum #3 clearly outlined that the compensation owing was "*per day travelled*". While the parties used the phrase "*locomotive engineers **travelling** to and from the program…*" in Addendum #3 when referring to the need to travel for this training, the parties did not choose similar phrasing in Addendum #4. In Addendum #4, the phrase used by the parties "*locomotive engineers **attending** the training program shall be compensated…..*.

[66] That Addendum did not make this specific reference to paying "*per day travelled*" for LE's getting to the program. Payment in Addendum #4 is tied to "*attending*" the Training Program rather than "*traveling*" to the program. Compensation for "*attending*" the Training Program was "*unlinked*" from compensation for "traveling" to the Training Program, in Addendum #4.

[67] The dividing factor for expenses was 80 km: If an LE lived within 80 km of a training location, they were defined as being "inside" that location; if they lived outside of 80 km; they were "outside" of that training location. *Yet all LE's – whether inside or outside the training location* – qualified to receive the eight hours of compensation on day 1 and 14: There is no distinction made in the Compensation section of Addendum #4 for LE's "inside" the training location or "outside" that location.

[68] The parties only made that distinction for expenses.

[69] This "standardized" compensation for days 1 and 14, by extending that compensation to all LE's, regardless of location. Therefore, LE's in Toronto or Montreal – who had no need to "travel" to "attend" the training - were paid the same as an LE from a far off location, under Addendum #4.

[70] The Company attempts to make a very fine distinction regarding "attendance". However, it cannot be said that locomotive engineers are not "*attending*" the Training Program when they do so "*virtually"*.

[71] Transport Canada still requires that attendance. LE's are still required to be recertified every three years, and "*attend*" the training, even if that is done virtually. As noted by the Union, the Company still takes a "roll call" at the Training (a fact which was not disputed by the Company), to keep track of who is "attending" for re-certification, as required.

[72] If an LE takes the training "*virtually"*, that LE is not denied certification for not "*attending*" the program; they are considered to have "attended" and completed that training. To limit attendance to only "in-person" attendance would require a more specific use of the phrase "*traveling"* and a "link" between the two events, as occurred in Addendum #3.

[73] While the Company argued that clear and unequivocal language is required in order for compensation to be payable, I am satisfied the language used in the "Compensation" section of Addendum #4 satisfied any such requirement. The Company has agreed to compensate LE's who "attend" the training for days 1 and 14.

[74] To agree with the Company would be to re-write this Addendum: It would require a change to how the parties defined the Training Program for all LE's as including days 1 and 14; it would require removal of an entire paragraph which states that compensation "shall" be paid for days 1 and 14; it would require a change in the distinction the parties themselves made between "expenses" and "compensation"; and it would be "add back in" a link between attendance and travel that the parties themselves removed as between Addendum #3 and Addendum #4.

[75] I am satisfied the word "attending" is broad enough to encompass both virtual and in-person attendance.

[76] While the parties did not choose to carry through the reference to "travelling" in Addendum #3, as noted above, they did carry through another reference. The following statement appears in both Addendum #3 and Addendum #4:

> Those locomotive engineers in the Corridor wishing to return home on the weekend in the middle of the program may do so at their own expense, ***without loss of compensation for those two days but without additional compensation for travelling.***

[77] If the clause under "Compensation" noted above did not exist, I would have been persuaded by the Company's arguments: The inference from the reference to the middle weekend days "not" attracting compensation "for travelling" would have been that Rest days 1 and 14 "*do"* attract compensation ***for travelling***. ***However,*** the clause relied upon by the Union in the "Compensation" section of Addendum #4 ***does*** exist and it is mandatory, using the phrasing of "shall".

[78] The Company's argument fails to give this "Compensation" agreement clause any meaning.

[79] I am prepared to find that the mutual objective intention of the parties was to "divorce" the pay for days 1 and 14 from the concept of "traveling" and to provide that all LE's are paid for the "rest days", regardless of the need for travel, and to institute distance requirements for reimbursement for travel expenses. The parties also clarified that LE's who choose to travel home in the middle weekend do so on their own dime.

[80] I am therefore satisfied it is a clear and unequivocal requirement that the Company must pay LE's as part of the Training Program for eight hours "over and above…" on days 1 and 14, whether attendance is "in-person" or "virtual".

[81] The Grievance is upheld.

Remedy

[82] The remaining question is remedy.

[83] The Union has requested a declaration that the Company is in breach of the Collective Agreement.

[84] I agree that is appropriate.

[85] A declaration will issue that the Company is in breach of the Collective Agreement – and in particular Addendum #4 (now #5) when it declines an employee's claim for compensation for days 1 and day 14 when that employee attends the Training Program virtually.

[86] The Union has also sought compensation back to 2020, when it first became aware of the contravention.

[87] I cannot agree with the Union that an order of compensation should be made for all employees back to 2020, as requested. The Union did not file this Grievance until March of 2021.

[88] In the case of a continuing grievance - where each declination is a new breach - the time when the dispute crystallizes between the parties to determine which breaches are caught within the grievance filing is not the point in time that the Union first became aware the breach was occurring. Rather, it is the *most recent breach prior to* the filing of the Grievance which sets when the time begins to run for compensation: *Port Colborne General Hospital v. O.N.A.* (1986) 1 C.L.A.S. 41 (at para. 13). From that point forward, the dispute has crystallized as between the parties.

[89] I will remit to the parties the determination of when the breach occurred which was closest in time to the filing of the Grievance. I remain seized to determine that date if the parties are unable to agree.

[90] An Order will issue that employees who were denied compensation for days 1 and 14 from the date as determined in the above paragraph forward, are to receive payment for those days, as required by Addendum 4.

I remain seized for any questions relating to these directions and/or Orders.

I also remain seized 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 17, 2025

CHERYL YINGST BARTEL
ARBITRATOR

Addendum 4
Two (2) week Locomotive
Engineer Training program

Between:

VIA Rail Canada Inc.

(Hereinafter referred to as the «Corporation»)

AND: The Teamsters Canada Rail Conference (Hereinafter referred to as the «TCRC»)

The parties discussed and reviewed the two (2) week Locomotive Engineer (LE) training program in a view to standardize the process.

Definition of terms used in the document

Inside the training location ➔ Applies to LEs whose residence is within eighty (80) kilometers of the

training complex.

Outside the training location ➔Applies to LEs whose residence is in excess of eighty (80) kilometers of the training complex.

Note: Residence location will be confirmed with the shortest available route as determined by Google maps

Selection of Training Program

Locomotive Engineers will be given the choice to select the training period in advance so they can manage their time effectively. They must ensure their selection will not have his/her CROR and QSOC qualifications expire.

Upon receipt of the Locomotive Engineers selectio11S, in the event the recertification schedule conflicts with the vacation allotment of a particular terminal, the Senior Manager and Local Chairman will address the specific issue.

Locomotive Engineers within the same training location will be be-allowed to trade dates upon consultation with the Local Chairman and their Senior Manager.

The Corporation will not unreasonably withhold consent to change a scheduled date to attend the training program. On request, the Corporation will consider changing the scheduled date if special circumstances exist and the Locomotive Engineers as requested the change prior to the new date requested.

If the Senior Manager, Transportation and the Local Chairman of the Union are unable to resolve a request to change a scheduled date to _attend the training program, the matter will be forwarded immediately to the appropriate General Chairman and the Director, Labour Relations or his delegate for their review.

Working assignment and Rest days

It is understood that for purposes of replacing the Locomotive Engineer attending this training, the training program will be considered as a fourteen (14) day vacancy. The working assignment vacated will be advertised as a Temporary Vacancy in accordance with applicable rules.

Day 1 - Sunday - Rest Day

Monday – Friday – Training Days

Saturday – Sunday – Rest Days

Monday – Friday – Training Days

Day 14 – Saturday – Rest Day

It is understood that Locomotive Engineer's attending this two (2) week training course will have their original work assignment altered to the training schedule for the duration of the program.

Compensation

Locomotive engineers attending the training program will be compensated eight (8) productive hours per day for the ten (10) days occupied in training. The two (2) week period will equal eighty (80) productive hours of compensation at the rate of pay.

Employees attending the training program are not eligible to over and above payments for time spent in classroom.

In the event that the total compensated hours exceed 160 hours in a twenty-eight (28)-day period, overtime. payments will be applicable.

Locomotive Engineer attending the training program shall be compensated eight (8) hours over and above the guarantee and counts toward the 8 rest days in the 28-day period on day I and 14 of the programs.

Notwithstanding the residence location and for the purpose of standardizing the compensation process, employees shall be compensated eight (8) hours over and above the guarantee for each rest's days in the middle of the training program schedule and counts toward the 8 rest days rest in the 28 days period.

If a Locomotive Engineer opts to work in the middle of the training program, he will be compensated accordingly to the assignment and will not be compensated 8 hours over and above the guarantee for the specific rest day.

Expenses

Approved transportation costs for Locomotive Engineers outside the training location will be paid either directly by the Corporation or the cost will be reimbursed to the Locomotive Engineers on submission of expense forms. Each region will determine its method of payment of transportation costs.

Accommodation at the Corporation's designated Hotel will be paid for by the Corporation for those Locomotive Engineers travelling from outside the training location for the full 13 days duration of the training.

All additional expenses such as pay T.V., room service etc. are the responsibility of the employee.

There will be reimbursement for reasonable dry-cleaning costs incurred while they attend the training program for Locomotive Engineers outside the training location.

Locomotive Engineers outside the training location wishing to travel home on the weekend in the middle of the program may do so at their own expense, without loss of compensation for those two days but without additional compensation for travelling. They shall advise their Senior Manager Train Operations and ensure room cancellation accordingly thus to avoid additional cost.

Travel

Locomotive Engineers outside the training location wishing to travel to and from the training location by car, at the beginning and end of the training session, require the prior authorization of their Senior Manager

Train Operations. If so, authorized they will be reimbursed at the rate per kilometer of the collective agreement no. 1.4 for their travel costs.

Meals

Employees outside the training location travelling prior to (first Sunday), and from, (last Saturday) will receive the following meal allowance0.:

- Travel time Jess than six (6) hours = $41
- travel time more than six (6) hours= $75

Locomotive Engineers from outside the training location, attending the training program will receive $75.00 per day for meals, for the 12-day duration of the training program.

Locomotive Engineers inside the training location attending the training program will receive $15.00 for lunch for the IO days duration of the program.

Note: In the event that the Corporation is paying lunch at the training location, the amount for meal will be reduced by $15.00.

Return to Service

Locomotive Engineers, on their return to their residence from the training program, will not be considered available for duty prior to 1OhOO am on the Sunday. (Excluding the 2 hours calling time)

The Corporation and the Union agree that this agreement is for the purposes of the Locomotive Engineer training program outlined above only. In the event there is a significant change to the location or length of this training program, the parties will meet to discuss what changes, if any, are required to the terms of this agreement.