CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 5188

Heard in Ottawa, June 10, 2025

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Claim on behalf of all Work Equipment Maintainers who worked temporary positions in the Toronto Shop, Sudbury Shop, Chapleau, Schreiber during the winter of 2023/2024 (Union file 13-2530; Company file CAN- CP-MWED-2024-00042142). The Union disputes that the Company's ability to bulletin headquartered non-permanent and temporary seasonal work equipment positions without meal and mileage expenses.

JOINT STATEMENT OF ISSUE:

CPKC bulletined temporary Work Equipment Maintainer positions for the winter months of 2023-2024 in the Toronto Shop, Sudbury Shop, Chapleau and Schreiber in the Eastern Region. The temporary shop positions were bulletined as headquartered positions and employees working these positions are not eligible for meal and mileage expenses.

The Union disagreed with the denial of the meal and mileage expenses and filed a Step 1 grievance objecting to the Company's actions was submitted on May 22 2024 and a Step 2 on July 17 2024. The Company denied the grievances by way of responses dated June 18 2024 and August 20 2024.

Union's Position:

The Union contends that:

1) The Company's actions are in violation of the past practice between the parties;
2) The Company's actions are in violation of sections 12.6(a), 12.6(f) and 12.6(h) of the Collective Agreement.

The Union requests that:

The Company be ordered to compensate the grievor's for all expenses wrongfully denied in the circumstances described above.

COMPANY POSITION:

The Company disagrees with the Union's contentions and denies the Union's request.

The Company maintains that the Union has failed to establish that the Company's actions are in violation of any past practice between the parties as alleged. The Company disagrees with the Union's seniority and classification arguments and maintains that all temporary shop positions were bulletined in compliance with Section 10.2 of the Wage Agreement, identifying the classification, the sole work location, the rest days, the closing date, the particulars of accommodation and the expected duration. The Work Equipment Shop positions in dispute were

not Production Crew positions. The Company maintains that there has been no violation of Section 12.6(h) of the Wage Agreement.

The Company further maintains that there has been no violation of Section 12.6(a) – System Rest Day Travel Policy. In order to qualify for rest day travel assistance, an employee must be required to work away from their home location on a regular basis. Work Equipment Shop positions are bulletined, clearly stating sole work location. The Grievor's are free to bid on position of choice, including positions close to the PPR.

As Section 12.6(a) does not apply to Work Equipment Shop positions, there cannot be any violation of this Section in this instance.

Section 12.6(f), when read as a whole, explains expense benefit for employees who are forced to temporary vacancies. The Union implies that the Grievor's in this case were forced to temporary winter/Work Equipment positions. This did not occur. The Grievor's bid on temporary winter/Work Equipment positions freely and were not forced to the temporary positions.

Section 12 – Meals, Lodging and Expense claims is strictly adhered to for all Work Equipment employees, including the Grievor's. Given this, the Company maintains there has been no violation of the Wage Agreement.

Section 8.35.1 also establishes TR&E Region Crews. Note 2 under this Section outlines that benefits contained in Section 8.35 shall not apply to employees that are employed in Work Equipment Repair Shops and are headquartered and working at their respective Work Equipment Repair Shops. The Company maintains that the Grievor's bid on and were working headquartered positions in their respective Work Equipment Repair shops.

As an additional comment, failure to specifically reference any argument or to take exception to any statement presented as "fact" in the Union's grievance does not constitute acquiescence to the contents thereof. The Company maintains that no violation of the Wage Agreement has occurred and requests that the Arbitrator deny the grievance in its entirety.

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

For the Company:
(SGD.) L/ McGinley
Director Labour Relations

There appeared on behalf of the Company:

S. Oliver	– Manager, Labour Relations, Calgary
E. Carriere	– Manager, Labour Relations, Calgary

And on behalf of the Union:

W. Phillips	– President, MWED, Frankford
M. Foster	– Director, Eastern Region, Belleville
R. Bradley	– Director, Prairie Region, Winnipeg

AWARD OF THE ARBITRATOR

Context

This matter concerns the validity of the decision of the Company not to pay benefits under article 12.6 of the Collective Agreement to certain employees assigned to headquarters for temporary positions during the 2023/2024 Winter season.

Issues

A. Was there a change to benefits?
B. Does the Collective Agreement prevent a change to benefits?
C. Does estoppel prevent a change to benefits?

A. Was there a change to benefits?

Position of Parties

1. The Union alleges that the Company has changed benefits for its members, by assigning headquarters designations to temporary postings. It states that this change came to its attention as a result of Bulletins 2023-11 (8341) and 2023-12 (8396).

2. The Company alleges that there has been no change to benefits given to particular postings.

Analysis and Decision

3. The Bulletins sent out in November and December 2023 are postings for 15 temporary positions, 5 of which are assigned to a particular headquarters ("headquartered positions"). These positions are NO Rover Relief Maintainer (x 2), NO Work Equipment Repair Shop (x2) and SO Rover Relief Maintainer (x1) These postings note: "Accommodation No expenses unless detained away from Headquarters". The other postings ('non-headquartered positions") are for multiple locations or are subject to change due to operational requirements. These positions note: "Accommodation Non-Headquartered Positions-Expenses provided per 12.9(b), 12.9(c), 12.9(h), 12.10 and 12.26" (see Tab 1, Union documents).

4. It is noteworthy that the 5 headquartered positions in previous years were assigned to multiple headquarters or were subject to operational change. (see Tab 6 Union documents). In previous years, these positions were advertised as "Accommodation Direct billed hotels and meal allowances or per diem if held away from permanent headquarters".

5. Thus, while it is true that the 5 headquartered positions now only get expenses if “detained away from headquarters”, it is equally true that the designation of the locations has also changed. These positions are no longer assigned to multiple headquarters, nor are they subject to operational change. These temporary positions are now assigned to specific headquarters.

B. Does the Collective Agreement prevent a change to benefits?

6. The Union has alleged that the Company, in changing the benefits provided, has violated articles 12.6 (a), (f) and (h) of the Collective Agreement. These articles read as follows:

> 12.6 Expense Claim
> a) **System Rest Day Travel Policy**
> Rest day travel arrangements must be fair and practical and must not be permitted to interfere with the performance of work. These arrangements must also contain suitable restrictions on the frequency of trips and must not place an unreasonable economic burden on the Company.
> A variety of means can be utilized to assist the employees with rest day travel. The determination of the means to be applied in any given situation must rest with the appropriate Company Officers.
>
> […]
>
> f) **Forced to temporary vacancies**: (Regional/ District Seniority) (Must be a minimum of fifty-six (56) kilometers from their residence) -occurs when a junior employee is forced to a position through the application of senior may/junior must rules.
> -when direct billed accommodation is supplied, the meal allowance shall be $53.00. Effective January 1, 2024, this amount will be increased to $55.00.
> -in lieu of the above and at the employee's discretion, per diems are provided in lieu of direct billed accommodation shall be $117.10. Effective January 1, 2024, this amount will be increased to $120.10.
> -employees on a per diem must secure suitable accommodation to ensure proper rest.
> Note: The Company's current practice of providing expenses to employees occupying temporary positions at certain locations, whether by bid or force, will not be charged.
>
> […]

> (h) **These expense entitlements will apply to production crew employees in the following four (4) situations**….
>
> Note: These expense entitlements have application to employees on production crews only. They do not resolve the issues involving employees accommodated in boarding cars or direct billed accommodation, on other than production crews, nor do they set precedent in those cases.

7. The plain wording of article 12.6 (a) is to deal with employees who are required to travel on their day of rest in order to get home. The article notes qualifications, that an employee "must be required to work away from their home location on a regular basis". This would make sense for employees who, as part of their job requirements, are required to travel away from their home locations.

8. I find the Company argument persuasive that the 5 disputed positions are not required to regularly work away from their headquartered positions. Employees begin and end their work days at headquarters. Should they be forced exceptionally to work away from headquarters, these employees would get expenses when "detained away from Headquarters".

9. With respect to article 12.6 (f), I find unpersuasive the Company argument that these are not "forced to temporary vacancies", as the employees had bid on the positions. I find the argument unpersuasive as the following Note clearly sets out: "The Company's current practice of providing expenses…whether by bid or force, will not be changed".

10. However, I also am conscious of the fact that the Note refers to their practice of paying expenses "at certain locations". This must mean that expenses are not paid at all locations.

11. With respect to article 12.6 (h), I find the Company arguments more compelling. The article is intended to address expense entitlements for production crew employees

living in Company billed accommodation or boarding cars at various distances from their place of residence. I do not find that the Union has led sufficient evidence to show that the 5 positions were part of a production crew. The evidence that has been led tends to demonstrate the opposite, that the work would largely be done at the headquarters, with the employee beginning and ending the work day at that location.

12. The most that can be said is that the Company has changed the headquarters for 5 temporary positions. This is to be distinguished from a change to the headquarters of an existing position. Here, employees bid on a temporary winter position, knowing that it was specifically headquartered and that benefits, with some exceptions, were not paid.

13. At issue, then is whether the Company has the right to change headquarter designations for a new position.

14. The Company argues strongly that it is entirely proper for it to designate work locations. It notes that article 10.2 of the Collective Agreement sets out the requirements for a bulletin, including location:

> 10.2 Bulletins will show classification of position, location and/or expected work location in production gang advertisements, rest days, closing date, particulars of living accommodation, if the vacancy is temporary, its expected duration and any other information relevant to the position. The format of bulletins will be standard across the System.

15. It also notes that the Work Equipment Maintainers Supplemental Agreement (see Tab 7, Company documents) sets out that benefits are paid when employees are working away from headquarters and that the Company has the sole right to designate the work location:

> "2.6 Employees under Article 2.1 will be paid out-of-pocket expenses for room and board when working away from headquarters, except when supplied with a boarding car.
>
> […]

> 3.8 It is understood that the Company has the sole right to designate the location of the Shop to which personnel will be assigned."

16. In **CROA 3139**, Arbitrator Picher dealt with a decision by the company to move the headquarters location of three employees. The Company gave notice to the Union under the technological, operational or organizational change provision of the Collective Agreement. While the case dealt with the issue of whether all three positions needed to be abolished, the Arbitrator also dealt with the broader issue of the right of the Company to change headquarters location:

> The Brotherhood has in fact pointed to no provision of the collective agreement which would either expressly or implicitly limit the ability of the Company to change the headquarters of an established position. There is nothing which has been drawn to the arbitrator's attention which would prevent the Company from moving an existing position from one headquarters location to another, subject of course to giving the appropriate notice of operational or organizational change where such a move involves adverse effects…
> The ability to establish and abolish positions and to declare vacancies is among the most important of management prerogatives…"

17. Here, the Company chose to post certain temporary positions at certain specific locations for the Winter 2023/2024 season. It did not withhold to itself the right to send employees to multiple headquarters, or have the position location be subject to "operational requirements", as had been the case for previous Winter seasons. In my view, if the Company has the right to change the location of headquarters for existing positions (see **CROA 3139**), it clearly has the right to do so when it is creating new positions pursuant to article 10.2. If, however, the change occurred after the position was accepted, it is likely that the operational or organizational change provisions of the Collective Agreement would apply.

18. I find that the Company has the right to change the headquarter locations for new temporary jobs. In so doing, the benefits applicable to that position may be established as a function of whether the position is assigned to a headquarters, without infringing article 12.6 of the Collective Agreement.

C. Does estoppel prevent a change to benefits?

19. The Union argues that even if the decision not to pay benefits is not contrary to the Collective Agreement, the Company should be prevented from doing so on the basis of estoppel or mutual consent.

20. In **CROA 5042**, this arbitrator examined the doctrine of estoppel in the context of a Company change to a 20-year practice concerning a paid lunch break in certain Shops:

> 9) Article 8.4 of the Collective Agreement reads as follows:
>
> Eight (8) consecutive hours, exclusive of meal period (which shall be onehour unless otherwise mutually arranged) shall, except as otherwise provided, constitute a day's work. If an employee normally takes a one
>
> (1) hour meal break and is required to work any portion of that time they will be paid time and one half for actual time worked. When eight (8) hours of continuous service are required in regular operations, twenty (20) minutes will be allowed in the fifth or sixth hour of service for a meal without loss of pay, during which no service will be performed. Requirements of the nature of service will determine at what point in the fifth or sixth hour of service the twenty (20) minutes will be.
>
> 10) The article sets out two options:
>
> Option 1: 8 hours with a 1-hour unpaid lunch break;
>
> Option 2: When continuous service is required, 8 hours with a 20-minute lunch break in the fifth or sixth hour without loss of pay.
>
> […]
>
> 21) Estoppel is an equitable remedy employed by Courts and arbitrators, to prevent a party from insisting on its strict legal rights, when it would be inequitable for the party to do so. Before estoppel can be found, the moving party must establish that it has met four
>
> criteria:
>
> 1) A representation made by the Company either verbally or by conduct to the employee;
> 2) An intention on the part of the employer that the representation would be relied upon by the employee;
> 3) Actual reliance on the representation by the employee; and,

> 4) Detriment suffered by the employee as a result of his reliance.
>
> 22) Arbitrator Clarke in CROA 4550 summarized Supreme Court of Canada jurisprudence as follows:
>
> The Union has alleged that this change is inconsistent with past-practice and as a result, estoppel applies. As the party bearing the onus of proof, the Union must satisfy all four elements of estoppel for their grievance to succeed. Any failure to meet their burden must cause their grievance to fail.
>
> 23) The first criterion is that a representation has been made by the Company, either verbally or by conduct, to the employee. While no statement has been made, the Company has by its conduct over the last twenty years, made a representation to the Union that Option 2 applied. As Arbitrator Silverman noted in AH 655: "That consistent application over those years, and through a number of contract negotiations, was a clear and unequivocal representation by conduct that the Life for S & C Program would continue". In the present matter, the conduct was for an even longer period of time, 20 years, as compared to 13 years in AH 655.

21. It is noteworthy that in **CROA 5042**, there was evidence of a change to a long-standing practice to existing positions and where notice was given.

22. There are multiple assertions by the Union in their Brief to a long-standing practice for the payment of benefits under article 12.6. It points to multiple postings from 2020-2023, where benefits are paid according to the Collective Agreement (see Tab 6, Union documents). However, all of these postings, over the three years in question, specify that there are multiple work locations, or that the location is subject to operational change.

23. The Union points further to two recent postings, which it submits show the contradictory nature of the payment of benefits (see Tab 7, Union documents). However, I note that the first posting has multiple work locations while the second is located at HQ-Toronto Work Equipment Shop. The first is entitled to benefits while the second is not. In my view this is not contradictory; it is consistent with headquartered employees not receiving benefits, while employees either required to travel, or subject to extensive travel, are entitled to benefits.

24. I find that the situation here differs from the situations in **AH 643**, **AH 655**, **CROA 1976** and **CROA 5042**. In each of those cases a long-standing practice was established. Here, I do not find that there is evidence of a practice or mutual consent to pay employees occupying headquartered temporary positions the benefits set out in article 12.6.

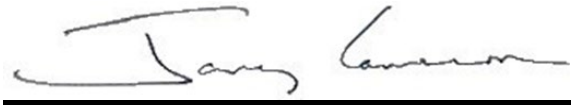
25. Nor can I find that the change is arbitrary, as the Union argues at paragraph 32 and following of its Brief. As Arbitrator Picher noted in **CROA 3139**, one of the most important functions of management is to create and abolish positions. If the Company found that there was sufficient work in a single headquarter location, it should be able to create a temporary position accordingly. I do not find that the Union, which bears the burden of proof, has established that the decision of the Company to headquarter the 5 positions in particular locations is arbitrary.

Conclusion

26. Accordingly, the grievance is dismissed. If the Union wishes the contested benefits to be applicable to employees occupying temporary headquartered positions as well, it should do so through collective negotiations.

27. I remain seized with respect to any questions of interpretation or application of this Award.

August 15, 2025



JAMES CAMERON
ARBITRATOR