CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 5194

Heard in Ottawa, June 12, 2025

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The Company's alleged violation of the Collective Agreement under the provisions of Article 37, Addendum 19 of the 4.2 Collective Agreement, the interpretation of Item 17 of the MOA dated February 5, 2014, and the "NOTE" when the Company allegedly failed to respond to a Step 1 grievance filed by the Union on July 29, 2015.

JOINT STATEMENT OF ISSUE:

On July 29, 2015 TCRC-CTY Local Chairman Jean-Francois Bedard sent the Company a Step I grievance in accordance with Article 32.1(a) of the 4.2 Collective Agreement regarding the Company's failure to ensure there were a sufficient number of Traffic Coordinators qualified and trained to cover all the vacancies in the Greater Montreal Area.

The Company failed to respond to the Union's Step I grievance. The Union progressed their grievance through the grievance process and filed a grievance for the Company's alleged failure to respond to the July 29, 2015, Step 1 grievance.

Union's Position:

The Union submits that the Company violated Articles 31 and 32 of the 4.2 Collective Agreement when it failed to respond to the Step 1 grievance filed by the Local Chairman Jean-Francois Bedard on July 29, 2015.

The Union further submits that the Company violated Article 37 of 4.2 when they did not exercise their rights reasonably by failing to respond to a Step 1 grievance as set out in Article 32 of the Collective Agreement.

The Union contends that the Company violated Article 32.1 along with the NOTE in the 4.2 Collective Agreement, which states, "The NOTE reads: The Company must respond to the Union's grievance particulars at each Step of the Grievance Procedure."

The Union further contends that this is a systemic issue, as the Company fails to respond to grievances for years, if ever, despite the Union's ongoing efforts to ensure that substantive responses are received regarding the issues raised through the grievance procedure.

Additionally, given the repeated violations of the Collective Agreement, a remedy under the provisions of Addendum 19 should be applied.

Company's Position:

The Company does not agree with the Union's position and alleged violations of the Collective Agreement.

Article 32.1 and the note does not serve to eliminate the provisions found in Article 32.4. The grievance and grievance particulars are separate and distinct. Article 32.4 also allows the Union to progress a grievance to the next Step should the appropriate office of the Company not respond within the prescribed time limits.

The Company contends that the Union is expanding the application of the NOTE to encompass not just the particulars of the grievance, but also the grievance itself. There is nothing in the NOTE to suggest that it has an overriding effect on the existing language. Addendum 19 is only applicable when it is agreed between the Company and the General Chairperson of the Union that the reasonable intent of application of the Collective Agreement has been violated, which is not the case here as there has been no agreement between the Parties.

The Company maintains that the doctrine of res judicata applies in this circumstance, as the arbitration decision under AH801 squarely dealt with an identical collective agreement provision dealing with the same bargaining unit.

The Company does not agree that a remedy is applicable in this case. The Company submits that the Collective Agreement expressly outlines the natural remedy for when a Company Officer fails to respond to a grievance within the prescribed timeframe – the grievance is progressed to the next step. As such, no other alternate remedy can be permitted.

For the Union:
(SGD.) J. Lennie
General Chairperson

For the Company:
(SGD.) M. Salemi
Manager Labour Relations

There appeared on behalf of the Company:

M. Salemi	– Manager, Labour Relations, Toronto
R. Singh	– Senior Manager, Labour Relations, Calgary
M. Smadella	– Assistant, Superintendent, Kamloops
J-F. Migneault	– Manager, Labour Relations, Montreal

And on behalf of the Union:

R. Church	– Counsel, Caley Wray, Toronto
G. Gower	– Vice General Chairperson, CTY-C, Brockville
E. Page	– Vice General Chairperson, CTY-C, Hamilton
J-F. Bedard	– General Secretary, Montreal

AWARD OF THE ARBITRATOR

Context

1. This matter concerns the failure of the Company to respond at each level of the Union grievance. It also concerns the issue of whether a remedy is needed, and if so, what it should be.

Issues

A. Is there res judicata?

B. Has the Company violated articles 31, 32 and 37 of the 4.2 Collective Agreement in failing to respond to a Step 1 grievance?

C. If so, does Addendum 19 apply?

D. What remedy is appropriate in the circumstances?

A. Is there res judicata?

Position of Parties

2. The Company argues that there is res judicata, given the decision of Arbitrator Clarke in **AH 801**. It submits that the same parties dealt with the same issue of a failure to respond to a grievance. The Parties are bound by the decision and the Union is abusing process by bringing on again the same case.

3. The Union argues that there is no res judicata, as the parties are different, there is a different legal framework, and even the subject matter, although similar, is different.

Analysis and Decision

4. For the reasons that follow, I find that the doctrine of res judicata does not apply to this matter.

5. Arbitrator Albertyn in **CNR Co v CAW (SHP 690)** noted the following about the doctrine:

> 32. Res judicata has two aspects: it bars a party from re- litigating an issue already decided in a previous proceeding; and it prevents a party from litigating a matter which it ought to have brought up in the earlier proceeding. The doctrine, including issue estoppel, is intended to give the parties finality when they have resolved an issue or had that issue adjudicative determined. Three conditions are necessary: the dispute must be between the same parties; the matter in dispute must be identical in both proceedings involving the same or an unaltered collective agreement; and the dispute, raised

> for the same purpose, must have been previously determined by adjudicative decision or resolved by agreement:
>
> Essar Steel Algoma Inc. and United Steelworkers, Local 225 (2008), 177 L.A.C. (4th) 183 (Stout); Toronto (City) v. CUPE Local 79 (2003), 120 L.A.C. (4th) 225 (S.C.C.), 2003) 3 S.C.R.
>
> 77; Canadian Union of Public Employees, Local 1253 v. Board of Management (King Grievance), [2006] N.B.L.A.A. No 15 (Bladon), at 19.
>
> Issue estoppel has the same purpose, to ensure the finality of an earlier adjudicative decision on the same subject matter between the same parties: Danyluk v. Ainsworth Technologies Inc., 2001 S.C.C. 44.

6. Brown and Beatty, Canadian Labour Arbitration (5th) at 2:72 note the three necessary conditions for the doctrine to be present:

> First, it must be between the same parties; secondly, the matter in dispute must be identical in both proceedings, involving the same or an unaltered collective agreement; and finally, it must have been brought for the same object or remedy.

7. Here the Company argues that the three conditions have been met:

> - First, the dispute is between the same parties—namely, Canadian National Railway (CN) and the Teamsters Canada Rail Conference (TCRC CTY)—as was the case in the prior arbitration decision, AH801.
> - Second, the subject matter of both proceedings arises under the same, unaltered collective agreement, specifically concerning the interpretation of identical language contained in the Memorandum of Agreement dated February 5, 2014, between CN and TCRC CTY.
> - Third, the issue raised in the present matter was previously adjudicated in AH801, where it was fully considered and decided by Arbitrator (Clarke).
> - Accordingly, all three elements—identity of parties, identity of issues under the same legal framework, and prior final determination—are satisfied, warranting the application of res judicata to bar re-litigation of the same dispute.

8. The Union argues that the Parties and the Collective Agreement are not the same, as the Parties before Arbitrator Clarke are not the same (CTY West Group vs CTY East Group), the issue is different (interpretation of the Note in article 32.1 vs breach of the mandatory language in article 32.1 and the Note), the arguments advanced are

different (good faith and honest administration of the Collective Agreement specifically not treated versus central to the present matter).

9. Here, the Parties are clearly not the same, and the Collective Agreement is different, even if the language is the same. I agree with the Union that the central thrust of the present argument deals with the effect of the language of article 32.1, rather than just the nature and impact of the Note at the bottom of the article. I note that Arbitrator Clarke specifically excluded any consideration of: “a different scenario which might raise the issue of the need for good faith in contract administration” (paragraph 29, **AH 801**, Tab 19 Company documents), whereas good faith is specifically an issue here.

10. I therefore find that res judicata has not been established.

B. Has the Company violated articles 31, 32 and 37 of the 4.2 Collective Agreement in failing to respond to a Step 1 grievance?

Context

11. This matter began as a result of a dispute about the availability of Traffic Controllers in the Montreal area. The Company failed to respond to respond to the Step 1 grievance, made a “boiler plate” response in Step 2 from the perspective of the Union and then failed to respond for some 8 years to Step 3 (see Tabs 6-10, Union documents).

12. The Union the filed the present grievance, alleging a Company failure to respond to the earlier grievance, on October 1,2015, to which the Company did not respond. The Union filed a Step 2 grievance, to which the Company offered a procedural response (“during the period in dispute, there was a change in personnel for Step 1 response and, consequently, a new procedure for submitting Step 1 requests”) but no substantive response. The Union filed a Step 3 response on March 8, 2016 and a Notice to Arbitrate on August 29, 2016. The Company did not respond until May 12,

2025, some 9 years after the Step 3 was filed by the Union (see Tabs 11-16, Union documents).

Position of Parties

13. The Union submits that the clear language of article 32.1 requires the Company to respond at each level of the grievance. It argues further that the Note, inserted following interest arbitration, requires the Company to respond to the particulars of the grievance and not with just a generic denial.

14. The Union argues that the fact that the Union can move to the next grievance level should the Company fail to respond, does not detract from the Company's obligation to meaningfully engage with the grievance process.

15. The Union submits that the Company, in failing to respond during the grievance process, is breaching the Collective Agreement and violating its common law obligation to act in good faith in contract administration.

16. The Company argues that there is no obligation to provide particulars at each step of the grievance process. If it does not respond, the Parties have agreed that the Union may move the matter to the next level pursuant to article 32.4 of the Collective Agreement. It submits that the bargaining history demonstrates that the Union is seeking through arbitration what it was unable to achieve at bargaining. The Company submits that the arbitrator is bound by the clear language of the Collective Agreement.

Analysis and Decision

17. The relevant articles of the Collective Agreement are as follows:

> 32.1) A grievance concerning the interpretation or alleged violation of this agreement (including one involving a time claim) shall be processed in the following manner:
>
> An appeal against discharge, suspension, demerit marks in excess of thirty and restrictions (including medical restrictions) **shall be**

initiated at Step 3 of this grievance procedure. All other appeals against discipline imposed shall be initiated at Step 2 of this grievance procedure.

a) Step 1 - Presentation of Grievance to Immediate Supervisor

Within 60 calendar days from the date of cause of grievance the employee or the Local Chairman may present the grievance in writing to the immediate supervisor. The grievance shall include a written statement of grievance as it concerns the interpretation or alleged violation of the agreement and identify the specific provisions involved. The supervisor will give his decision in writing within 60 calendar days of receipt of the grievance. In case of declination the supervisor will state his reasons for the decision in relation to the statement of grievance submitted. Time claims which have been declined or altered by an immediate supervisor or his delegate will be considered as being handled at Step 1.

b) Step 2 - Appeal to District Superintendent (Transportation)

Within 60 calendar days of the date of the decision under Step 1, or in the case of an appeal against discipline imposed within 30 calendar days of the date on which the employee was notified of the discipline assessed, the Local Chairman may appeal the decision in writing to the District Superintendent (Transportation). The appeal shall include a written statement of grievance as it concerns the interpretation or alleged violation of the agreement, and identify the specific provisions involved.

The written statement in the case of an appeal against discipline imposed shall outline the Union's contention as to why the discipline should be reduced or removed.

The decision will be rendered in writing within 60 calendar days of receipt of the appeal. In the case of declination, the decision will contain the Company's reasons in relation to the written statement of grievance submitted.

c) Step 3 - Appeal to Regional Vice-President

Within 60 calendar days of the date of the decision under Step 2 the General Chairman may appeal the decision in writing to the Vice-President.

The appeal shall be accompanied by the Union's contention, and all relevant information concerning the grievance and shall:

1) be examined in a meeting between the Vice-President or his delegate, and the General Chairman within 60 calendar days of the date of the appeal. The Vice-President shall render his decision in writing within 30 calendar days of the date on which the meeting took place; or

ii) should the Vice-President consider that a meeting on a particular grievance is not required, he will so advise the General Chairman and render his decision in writing within 60 calendar days of the date of the appeal.

> NOTE: The Company must respond to the Union's grievance particulars at each Step of the Grievance Procedure.
>
> …
>
> General
>
> 32.4) Any grievance not progressed by the Union within the prescribed time limits shall be considered settled on the basis of the last decision and shall not be subject to further appeal. The settlement of a grievance on this basis will not constitute a precedent or waiver of the contentions of the Union in that case or in respect of other similar claims. Where a decision is not rendered by the appropriate officer of the Company within the prescribed time limits, the grievance may, except as provided in the following paragraph 32.5, be progressed to the next step in the grievance procedure.
>
> 32.5) In the application of paragraph 32.1 to a grievance concerning an alleged violation which involves a disputed time claim, if a decision is not rendered by the appropriate officer of the Company within the time limits specified, such time claim will be paid. Payment of time claims in such circumstances will not constitute a precedent or waiver of the contentions of the Company in that case or in respect of other similar claims.
>
> [..]
>
> 32.8) Time limits specified in this article may be extended by mutual agreement.
>
> …
>
> 37) Management agrees that it must exercise its rights reasonably." (underlining added)

18. Both arbitral jurisprudence and CROA Rules call for the Collective Agreement to be applied, without the arbitrator adding to or amending the Agreement. Principles of contract interpretation call for the plain and ordinary meaning of the words to be given: (see **AH 647**, **ETFO and Elementary Teachers' Federation of Ontario Staff Assn. (Vehicle Provisions)** 2021 CarswellOnt 828, **CROA 3601**).

19. It is noteworthy that the underlined portions of the articles use words such as "shall" or "will". Arbitral jurisprudence has found these words to imply a mandatory action (see **Brewers Retail Inc. and United Food and Commercial Workers**, 1999 OLAA No 228).

20. In **AH 801**, Arbitrator Clarke reviewed similar language in a different collective agreement and found that there was an obligation to respond at each level of the grievance:

> The CA makes it clear that CN has an obligation to respond to the TCRC's grievances. There is no other way to interpret the language in article 121.1, *supra*, about each grievance step:
>
> a. Step 1: "…give a decision in writing within 60 calendar days of receipt of grievance";
>
> b. Step 2: " The decision will be rendered in writing within 60 calendar days of receipt of the appeal"; and
>
> c. Step 3: " Should the Vice-President consider that a meeting on a particular grievance is not required, he or she will so advise the General Chairperson and render the decision in writing within 60 calendar days of the date of the appeal.
>
> Evidently, a "decision in writing" means CN has an obligation to respond.

21. In **CROA 4870**, this arbitrator considered similar language in a different collective agreement and found that both the Collective Agreement and the CROA Rules required a response from the Company:

> 25. The Collective Agreement and the CROA Agreement both set out a requirement to respond to all levels of a grievance. Article 40.02 notes that the Step 2 response must be provided "as soon as possible but in any case, within 60 calendar days of the date of the appeal", while the CROA Agreement notes: "There is agreement that all grievances must be advanced and must be responded to in each case, at all levels…" (See Tab 15, Union documents).
>
> 26. Even if the Company is correct that the Union may move to the next level if the Company fails to respond to a grievance, this does not address the requirement in the Collective Agreement and the CROA Agreement that there be a response. The Parties recognize that there is value in having a position on the record, so that issues can be narrowed or agreements reached. No answer is not a good answer. This is not a practice to be encouraged. Here, the Company has breached article 40.02 and the 2018 CROA Agreement by failing to make a Step 2 Response.

22. I find that the plain wording of articles 32.1 (a)-(c) of the Collective Agreement here call for a mandatory written response from the Company within defined time lines:

"within 60 days" "will give his decision", "will state his reasons", "will be rendered", "will contain the Company's reasons ".

23. Much has been made of the Note added to the bottom of article 32.1:

> Note: The Company must respond to the Union's grievance particulars at each Step of the Grievance Procedure.

24. The Company argues that the Note was the result of extensive negotiations and ultimately an interest arbitration decision by Arbitrator Picher (see Tab 2, Company documents). It argues that there is no requirement for it to respond, but if it does respond, it must do so in response to the grievance particulars. It argues that the Union's only remedy is to go to the next level, pursuant to article 32.4.

25. I cannot agree. A plain reading of articles 32.1 (a)-(c) requires the Company to respond at each level of the grievance. These articles also require a detailed response from the Company and not merely a declination: "In case of declination the supervisor will state his reasons for the decision in relation to the statement of grievance submitted" (Step 1) and "In the case of a declination, the decision will contain the Company's reasons in relation to the written statement of grievance submitted" (Step 2). In my view, this clearly gives the Note a separate purpose, different from the purpose set out in the article itself (see **AH 647**).

26. The Note, when read in conjunction with article 32.1, underlines the mandatory nature of the Company response, and adds that the response must be detailed: "The Company must respond to the Union's grievance particulars at each Step of the Grievance Process". A simple declination is not sufficient.

27. I do not find there to be ambiguity between the article and the Note requiring an extensive review of the negotiating history between the Parties.

28. I cannot agree with the Company that article 32.4 is the sole answer to a refusal of the Company to abide by the obligations set out in article 31 and the Note. Good labour

relations require effective communication between the Parties. A reasoned response at each level serves at least to narrow the debate to the key issues and facts. Without a detailed response, any kind of compromise or agreement being made is next to impossible. As this arbitrator noted in **CROA 4870**: “No answer is not a good answer.” While article 32.4 permits the Union to take the grievance to the next level in the absence of a response from the Company, it does not address the failure to communicate a response to the Union grievance.

29. I find therefore that the Company failure to respond at all to the Step 1 grievance, a failure to provide a substantive response to the Step 2 grievance and the filing of a Step 3 response some 9 years after the time lines set out in the Collective Agreement, clearly amount to a violation of articles 31 and 37 of the Collective Agreement.

If so, does Addendum 19 apply?

Analysis and Decision

30. Addendum No 19 to the Collective Agreement reads as follows:

> During the current round of negotiations, the Council expressed concern with respect to repetitive violations of the Collective Agreements. Although the Company does not entirely agree with the Council’s position, the Company is prepared to deal with this matter as follows.
>
> When it is agreed between the Company and the General Chairperson of the Union that the reasonable intent of application of the Collective Agreement has been violated an agreed to remedy shall apply.
>
> The precise agreed to remedy, when applicable, will be agreed upon between the Company and the General Chairperson on a case-by-case basis. Cases will be considered if and only if the negotiated Collective Agreements do not provide for an existing penalty.
>
> In the event an agreement cannot be reached between the Company and the General Chairperson as to the reasonable intent of application of the Collective Agreement and/or the necessary remedy to be applied the matter may within 30 calendar days be referred to an Arbitrator as outlined in the applicable Collective Agreements.

> NOTE: A remedy is a deterrent against Collective Agreement violations. The intent is that the Collective Agreement and the provisions as contained therein are reasonable and practicable and provide operating flexibility. An agreed to remedy is intended to ensure the continued correct application of the Collective Agreement.

31. In my view the Addendum cannot apply, as there is no agreement between the Company and the General Chairman of the Union that the “reasonable intent of application of the Collective Agreement has been violated”.

32. The Company has been entirely consistent that in its view, both through bargaining and at Step 3 of this grievance, that it was not required to respond at each level of the grievance procedure (see Tabs 7-9, Company documents, Tab 10 Union documents). While this view is incorrect, in my opinion, it does show that there can have been no agreement that the Collective Agreement has been violated.

What remedy is appropriate in the circumstances?

Analysis and Decision

33. The Union has provided at Tabs 17 and 18 documents showing that there are 226 grievances without Step 2 responses and 159 grievances without Step 3 responses.

34. The Company has provided statistics at paragraphs 110-112 of its Brief showing grievance activity per Union. It alleges that this Union has been engaged in a pattern of filing an excessive number of grievances which has overwhelmed the grievance procedure, making it impossible for the Company to respond at each level.

35. There is no doubt that the Union has filed a great number of grievances. However, the Company has means at its disposal to deal with the situation. It can seek extensions of time from the Union to permit a reasoned response. It can meet with the Union to look at solutions or it could bargain the issue during negotiations. It could hire additional labour relations specialists to be able to respond in a timely manner. If it

detects a pattern of abuse in the filing of grievances, it can file its own policy grievance or address the issue at the Canada Labour Board. What it cannot do, however, is to ignore the Collective Agreement it has signed.

36. There is no doubt that in the present matter, the Company has failed to respond to the Union grievance according to article 31 of the Collective Agreement. I am particularly troubled by the fact that the Company failed to respond to a grievance about a failure to respond, and then waited 9 years to file its Step 3 response. This is not good labour relations.

37. However, the Company properly objects to the Union request for a cease-and-desist order and damages, given that neither were requested during the grievance process or in the JSI. The Parties have crafted the CROA Rules, and I am required to abide by them, subject to legislative requirements.

38. In the circumstances, I am limited to being able to make a declaration that the Company has violated articles 31 and 37 in failing to properly respond to the Union grievance.

Conclusion

39. The grievance is partially upheld. The Company violated articles 31 and 37 in their response to the grievance.

40. I remain seized for any questions of interpretation or application of this Award.

August 15, 2025

JAMES CAMERON
ARBITRATOR