CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 5198

Heard in Edmonton, July 9, 2025

Concerning

CANADIAN NATIONAL RAILWAY

And

UNITED STEELWORKERS LOCAL 2004

DISPUTE:

Misinterpretation, misrepresentation and application of Article 7.4 of Agreement 10.1.

JOINT STATEMENT OF ISSUE:

On May 17, 2024, a policy grievance was filed by United Steelworkers Local 2004 concerning the alleged violation of Article 7.4 of Agreement 10.1. The Union contends that Canadian National has unilaterally implemented an incorrect interpretation of Article 7.4, restricting members from bidding on other positions until they are qualified in their current position for up to 12 months.

Union Position:

1. The Union asserts that the Company's new interpretation and application of Article 7.4 is a direct misinterpretation and misapplication of the agreed-upon contractual language, which violates the members' rights to rightfully bid for other positions as per the Collective Agreement.
2. The Union maintains that the Company's policy effectively restricts members' career progression and opportunities within the Company, contrary to the past practice and the terms of the Collective Agreement.
3. The Union requests that the Company cease the application of the disputed interpretation of Article 7.4 immediately and revert any changes or restrictions placed on members' rightful ability to bid on positions as a result of the incorrect interpretation.
4. The Union further requests immediate discussions with the Company to ensure the proper application of Article 7.4, aligned with the Collective Agreement and past practice, and assurances that such unilateral changes will not occur in the future without proper consultation and agreement with the Union.

Company Position:

1. The Company disagrees with the Union's contentions and declines the Union's grievance and request to alter its current application of Article 7.4.
2. Both parties acknowledge the above statement as a true representation of the issue at hand and commit to working towards a resolution.

For the Union:
(SGD.) C. Kramer
President, Local 2004

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

There appeared on behalf of the Company:

P. Brasch	– Counsel, Norton Rose Fulbright, Calgary
K. Sung	– Counsel, Norton Rose Fulbright, Calgary
R. Fossen	– Counsel, Norton Rose Fulbright, Calgary
M. Boyer	– Senior Manager, Labour Relations, Montreal
J. Darby	– Manager, Labour Relations, Edmonton
J. Ponto	– Senior Engineering Officer, Edmonton

And on behalf of the Union:

D. Teolis	– USW Staff Representative, Sudbury
C. Kramer	– President, USW Local 2004, Lloydminster
T. Cotie	– Chief Steward GLD, USW Local 2004, Capreol

AWARD OF THE ARBITRATOR

Facts, Issue & Summary

[1] This is a contract interpretation Grievance.

[2] Article 7 of Agreement 10.1 is titled “Training”. The parties are disagreed on the meaning of Article 7.4, which states:

> Notwithstanding the provisions of Article 16.10 of Agreement 10.1, employees may accept promotion by bulletin to a higher classification in order of seniority prior to taking training in such classification. Employees so promoted **must** complete the training and become qualified within 12 months from the date they are promoted to such higher classification **or** be returned to their former position **and forfeit** any seniority acquired through such promotion (emphasis added).

[3] Article 7.21 provides that the Company may require individuals who are trained to remain in the positions for which they were trained for a certain time period *after* that training, if the training was three days or more.

[4] Article 7.8 requires that employees who are selected for training “*must attend and actively participate in all training sessions”.*

[5] On December 13, 2023, during the most recent round of bargaining, the Company provided a notice to the Union. The Company stated in that letter that its purpose was to “*inform you that upon conclusion of the current round of negotiations, CN will revert to the strict application of Article 7.4 of the 10.1 collective agreement*”.

[6] The Company then outlined the Article and stated:

> The Company will not permit an employee to be released from such position until the employee has completed the training and failure to successfully complete such training will result in the employee being returned to their prior position and lose all seniority acquired through such promotion.

[7] It then provided an example.

[8] This is known in labour relations parlance as an "*estoppel notice*". It brings to an end any past practice between the parties which does not conform to the Article as written.

[9] The parties are in disagreement as to the meaning of what was written and the impact of what the Union argued was the parties' previous and long-standing practice under this Article.

[10] The Union argued that under this practice – which it argued reflected how the clause was written - employees were entitled to "*bid hop*" to *another* position from the position they received under Article 7.4, even if their training was not complete. It argued this past practice has now been incorporated into Article 7.4.

[11] The Company argued Article 7.4 as written does not allow for that practice, and that the Union's reliance on any such practice was brought to an end with its estoppel notice.

[12] For the reasons which follow, the Company's position represents the objective meaning of Article 7.4. Any practice as between the parties was effectively brought to an end with the estoppel notice.

Arguments

[13] The positions of the parties are straightforward.

[14] The Union argued the Company's interpretation of Article 7.4 is incorrect. It argued Article 7.4 must be interpreted consistently with Article 15 relating to seniority rights, and that the Company's interpretation is inconsistent with that Article and impacts the exercise of those rights. It argued the Company's recent actions in bargaining are relevant to determining the meaning of Article 7.4. It argued the Company's attempt to impose what it states is the meaning of this Article is in fact an attempt to gain through arbitration what it was not able to gain in bargaining. It argued the meaning of this Article is informed by the long-standing practice of the parties, which allows individuals who move into positions under this Article, to also move out of them again into *another* position, before the training contemplated is

completed. It argued no estoppel arose, because the Union's interpretation is the correct interpretation.

[15] The Company argued that the "modern principle of interpretation" applies, as summarized and described by this Arbitrator in **CROA 4884**. It argued that in interpreting a disputed phrase, the "*plain and ordinary*" meaning of the Article must be determined from the wording the parties used, applying the appropriate interpretation principles. It argued the clause provides employees only two options once they are in a role for which they are not trained: to complete the training, or to be placed back into their former position. It argued this does not allow employees to "*bid hop*" into a different position before training is complete. It argued it properly provided an estoppel notice to the Union during the last round of bargaining, which brought an end to any past practice between the parties and served to advise the Union that it would be relying on this interpretation moving forward. It argued its notice gave the Union the opportunity to bargain any changes, which it did not do.

Analysis and Decision

[16] **CROA 4884** sets out and discusses the interpretation principles which must be followed by an Arbitrator tasked with interpreting a collective agreement.

[17] In summary, that Award noted that what is called the "*modern principle of interpretation"* was endorsed by the Supreme Court of Canada in 1998 in *Re Rizzo & Rizzo Shoes Ltd.* [1998] 1 S.C.R. at p. 41 and binds arbitrators who interpret collective agreements.

[18] The analysis of that principle has been outlined in detail in **CROA 4884**, which analysis is adopted here, but will not be repeated in detail, given the nature of this expedited process.

[19] In summary, that principle requires that the words of a contract are to be "*read in their entire context and in their grammatical and ordinary sense*" (often referred to as their "*plain and ordinary*" meaning), in a manner which allows them to work "*harmoniously*" with the balance of the contract. The modern principle places primacy on the *words* the parties chose to use, with a goal of determining the *objective* meaning of a particular clause.

[20] As also explained in **CROA 4884**, the Supreme Court of Canada had occasion to revisit the requirements of this "*modern principle*" in 2014 in *Sattva Capital Corporation v. Creston Moly Corporation* 2014 2 S.C.R. 633. That decision is known in the jurisprudence as *Sattva.* The Alberta Court of Appeal then had

occasion recently to apply *Sattva* specifically to the interpretation of collective agreements in *AUPE v. AHS* 2020 ABCA 4.

[21] While the decision was that of the "Court", on the bench for that decision was the current Chief Justice of Alberta, who was herself a well-respected and knowledgeable labour practitioner before her elevation.

[22] In *AUPE v. AHS,* the Arbitrator had determined where the parties' *subjective* evidence of the meaning of a certain phrase overlapped and applied that meaning. He was overturned by the Court of Appeal.

[23] In that decision, the Court of Appeal summarized the *"modern principle*" in the following terms:

> Arbitrators apply general principles of contract interpretation, albeit to a specialized type of contract, the collective agreement. As such, they must discern the intention of the parties from the written words. But the words must be read in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme of the agreement and the intention of the parties (emphasis added, at para. 37).

[24] That Court emphasized that it is the *objective* meaning that must be determined - from the plain and ordinary meaning given to the words used – and not the *subjective* meaning of what the parties themselves "*thought"* the contract meant, or even how they acted under that contract.

[25] The Court also confirmed that "*evidence of negotiations is not itself admissible as part of the factual matrix*" (at para. 31).

[26] In a well-written and concise decision, that unanimous Court clarified that the *subjective* intentions of a party are *never* relevant and in fact are inadmissible. It also provided explanation of what are included in such intentions.

[27] At para. 31 it noted that "*at the very least*" such subjective intentions would include a party giving evidence of what it thought the phrase means, and evidence or why a party did – or did not propose language and what specific problem it was meant to address.

[28] The Court stated such intentions were *never* relevant to an interpretive question.

[29] I am satisfied that evidence by a party of what it thought the *opposite* party meant by introducing particular proposals – and what that party was attempting to gain - would also be caught by this definition as subjective evidence of intention.

[30] That evidence is not admissible or relevant.

[31] The limitation against subjective evidence applies to the Union's arguments in this dispute. The Union argued from the reasons the Company put forward a particular proposal; and why the Company did so; and what it tried to – but did not – achieve. This is all evidence of *subjective* intentions, and so inadmissible.

[32] While "*surrounding circumstances*" are always relevant, the Court of Appeal in *AUPE v. AHS* confirmed that the Supreme Court of Canada has *not* abolished the "*Parol Evidence Rule*", and that an ambiguity must be found to allow evidence of past practice or post contract conduct (at para. 44). This was an important finding. The parol evidence rule prevents arbitrators from considering evidence which is "*extrinsic*" or outside the wording of the collective agreement, such as the parties' own practice in interpreting the agreement, or what the parties may or may not have said was the intention after the contract was reached. The Court has confirmed that such evidence is not properly considered by an Arbitrator who is tasked with determining the objective meaning of a written provision in a collective agreement, except in limited and specific situations.

[33] If a contract is ambiguous, that is one of the limited situations where past practice can be considered as an aid to determine the objective meaning of a collective agreement. As discussed in **CROA 4884**, ambiguity is present where a provision is found to be reasonably susceptible of more than one meaning. As clarified by an earlier decision of the Court of Appeal of Alberta (discussed at para. 35 of **CROA 4884**), difficulty of interpretation – or disagreement on interpretation – does not constitute ambiguity.

[34] The Union relied on **CROA 1930**, a 1989 decision of Arbitrator Picher, for the principle that a long-standing practice not objected to becomes part of the Collective Agreement. Both parties relied on **CROA 4606**, which contained a discussion of **CROA 1930**. The Arbitrator **in CROA 4606** confirmed there is a need for ambiguity before a past practice can be considered; and that past practice cannot create ambiguity if none is found to exist.

[35] That finding is consistent with the parol evidence rule, limiting consideration of extrinsic evidence, which the Supreme Court of Canada and the Court of Appeal of Alberta specifically confirmed is still applicable to contract interpretation.

[36] The Union also relied on **AH525** regarding past practice, however it was specifically noted in that case that the B.C. Labour Relations Board is entitled to

set out principles for Arbitrators, so that case has very limited application and is distinguishable.

[37] The Union placed significant emphasis on the existence and length of a particular practice between the parties of allowing "*bid hopping*" for those employees who have taken advantage of Article 7.4. It argued that practice was incorporated into the Agreement and informed this interpretation.

[38] Article 7.4 is not an Article that is reasonably susceptible of more than one meaning. I am satisfied that the meaning of Article 7.4 can be determined by giving a plain and ordinary meaning to the words the parties chose to ink their deal, by applying the modern principle of interpretation and the appropriate canons of construction supporting that principle. I am further satisfied that the words support a meaning which allows the provision to be read harmoniously with the balance of the Agreement; that such an interpretation which would not work an absurdity; or serve to rob any words of any meaning and that there is no specialized meaning to be given to any of the words.

[39] As I am satisfied this contract is *not* ambiguous any evidence of the past practice as between the parties – *regardless of how longstanding it is* – is not appropriately considered in determining the meaning of Article 7.4.

[40] Turning to the specifics of the disputed provision, according to the first sentence of Article 7.4, employees *can* be promoted to a "*higher classification in order of seniority prior to taking training such classification*".

[41] By Article 7.4, employees are entitled to exercise their seniority rights *in a situation where they would not otherwise be entitled to do so.*

[42] This type of situation provides an obvious benefit to an employee. I am satisfied Article 7.4 provide an ability to employees they would not otherwise have: Without that provision, no such promotion would be allowed by the exercise of seniority, as an employee would not have the required qualifications. It creates a *new* situation for employees who choose to act under this Article.

[43] As argued by the Company in its Reply, Article 7.4 is a "*carve out*" from the usual requirement that an employee must have the required training *before* they can bid on a position.

[44] The parties have agreed, however, to certain stipulations and limitations which apply when an employee has chosen to take advantage of this provision and move

into a position for which he or she is not trained. The clause itself sets out the conditions under which such a promotion is to be managed, when training has not yet been taken:

> …Employees so promoted **must complete the training and become qualified within 12 months from the date they are promoted** to such higher classification **or be returned to their former position and forfeit any seniority acquired through such promotion** (emphasis added).

[45] The word "*must"* is mandatory. It does not allow for any other decision to interfere with that training. I am satisfied that when an employee *does* choose to bid into a position for which they "*must*" receive training, they must follow the stipulations of this clause to either: a) become qualified "*within 12 months from the date they are promoted to such higher classification*". If they do not complete the training, then the clause also addresses what is to happen: b) they are to be "*returned to their former position*" and that they "*forfeit any seniority acquired*".

[46] Those are the two conditions that the parties have agreed will apply to this unusual situation, where the Company allows an employee to promote above their training level. The only choice that individual has, if he or she did not complete the training within 12 months, is *not to bid out to another position* but to be "*returned to their former position*".

[47] These two stipulations could not be met, if the interpretation of the Union were correct that employees remain entitled to bid wherever they want to move, before their training requirements are met.

[48] Given the mandatory wording of "*must"* and the outline of these two possible scenarios which the parties agreed to in this Article, there is no room for an individual to both take advantage of Article 7.4 by bidding into a promotion for which they are not qualified, and also choose *not* to stay in that position but to rather *"bid out*" before training is complete.

[49] I am satisfied this interpretation allows Article 7 to work together harmoniously with the balance of Article 7.

[50] Article 7.21 requires that an employee must attend all training sessions. If an employee were able to *"bid hop*" as argued by the Union, they would not be in a position to meet this requirement.

[51] Article 7.8 allows the Company to require that an individual *remain* in a particular position for a certain period of time, *after* the training is complete. That right would ring hollow and the Company would be unable to exercise it, **if** the Union's interpretation were correct that an employee is able to "*bid hop*" into another position under Article 7.4, for example after the 5th day of training is completed, but before it is finished.

[52] The Union's interpretation would frustrate the requirements of Article 7.4 rather than comply with that Article: If the Union's arguments *were* correct, that would create a situation where the stipulations of Article 7.4 cannot be met, as an individual would put themselves into a situation where they could not receive the contemplated training they were put into that position to receive. That interpretation serves to *frustrate* the two options that the parties themselves have agreed upon, rather than comply with those agreed terms.

[53] Further, confining employees to those stipulations does not work a form of prejudice, given this is an exception which already has provided a greater right to employees than they would have otherwise enjoyed under that Article.

[54] An interpretation that the Company can bring an end to a long-standing practice does not interfere with seniority rights as argued by the Union. It is not a limitation of seniority rights to hold employees to the two stipulations they have bargained, when employees are advanced without training. As the Company described in its Reply, the opportunity under Article 7.4 is a "carve out" which gives a *greater* ability to employees than they have under the Agreement in Article 15.

[55] Under Article 15, the individual would not be in that position in the first place, as he or she would not have the required qualifications. Article 7.4 is an exception to what Article 15 would otherwise require, for the exercise of seniority.

[56] That is an advantage which an employee may – or may not – choose to use. If an employee wants to wait for a *different* opportunity to arise instead, they may do so; they are not forced to have Article 7.4 apply to them.

[57] When Article 7.4 applies, the individual has *already* exercised his or her seniority to bid into a position for which he or she would otherwise *not* be able to access. What happens within that position is not a limitation on seniority rights, but involves compliance with what the parties agreed between themselves for what would happen *for those individuals who were promoted into positions for which they were not trained.*

[58] The parties relied on several authorities. While all have been reviewed, not all will be specifically mentioned.

[59] The Union relied on **CROA 4574**. In that decision, the tables were turned, and the Union was found to be entitled to bring to an end 26 years of past practice with an estoppel notice, just as the Company has done in this case. That supports the Company's position.

[60] The Company relied on **CROA 4884** as noted above, as well as certain other awards of this Office and in this industry from this Arbitrator's pen which also discuss contract interpretation principles: **CROA 4181**; **CROA 5121**; and **AH889.**

[61] The Company provided **CROA 4536** in its Reply. That was a decision between these parties from 2017, and involved an individual who did not gain a position both because he did not have training and because he did not have 12 months of service. The Union raised Article 7.4 for the first time at the hearing, but the Arbitrator found that Article did not apply, given the Grievor's lack of 12 months of service and not just a lack of training. That decision is therefore distinguishable.

[62] Whatever practice may have existed that went beyond the two options set out in Article 7.4, the Company was not required to maintain that practice – no matter how long-standing. That is why estoppel notice exists. As estoppel is an equitable doctrine, in the interests of equity, jurisprudence requires that estoppel notice be given at a point in time when the affected party – the Union in this case – can negotiate its inclusion into the Agreement, if it desires that practice to continue.

[63] In this case, the Union was unable to do so. The Union is in effect seeking at Arbitration what it was not able to gain in bargaining: It is asking for this latter part of Article 7.4 to be rewritten, to nullify the Company's estoppel notice and maintain the past practice. The Union desires that the Article add a choice for individuals to "*bid hop*", such that individuals can a) revert to their "*former position*" **or** b) bid out to "*any other position for which their seniority allows them to bid,* when Article 7.4 has been applied and training has not been completed.

[64] That is a completely different Article than the one that currently exists. An Arbitrator has no jurisdiction to rewrite an agreement. That is a gain that the Union must achieve at the bargaining table.

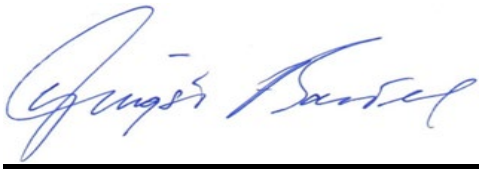
Conclusion

[65] The Grievance is dismissed.

[66] A declaration will issue that the Company is not in breach of the collective agreement with its estoppel notice.

[67] A further declaration will issue that there is no ability for an employee acting under Article 7.4 to move to a different position, *before* their training is completed for the position to which they were promoted, and assuming their compliance with the balance of Article 7 is achieved.

I remain seized with jurisdiction for any questions relating to the implementation of this Award; and to correct any errors and address any omissions to give it the intended effect.



July 28, 2025

CHERYL YINGST BARTEL
ARBITRATOR