

Memorandum of Agreement Establishing the CROA&DR

CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

Effective November 1, 2023, the CROA&DR Administrative Committee has agreed to amend the founding agreement establishing the Canadian Railway Office of Arbitration dated the 7th day of January 1965 (as amended and renewed since that date).

IT IS AGREED by and between the signatories as follows:

1. There shall be established in Montreal, Canada, the Canadian Railway Office of Arbitration and Dispute Resolution, hereinafter called the "Office of Arbitration" or "CROA&DR".
2. The administrative responsibilities for providing and administering necessary clerical staff, premises, facilities and other arrangements necessary to enable the arbitrators to exercise their function shall be discharged by an Administrative Committee (hereinafter called "the Committee") responsible to the signatories hereto. The Committee shall be composed of one representative appointed by each of the signatories whose names appear in Appendix "A" and in Appendix "B" hereof.

It is understood that the parties signatory hereto, expressly agree that nothing herein, or in the revisions agreed upon to the original Memorandum of Agreement establishing the Canadian Railway Office of Arbitration rules, will be used to circumvent or prejudice established jurisprudence, collective agreement procedures, policies, practices or negotiations, etc., either now or in the future.

3. Three arbitrators shall be appointed by the signatories hereto who shall have the duties and functions set out herein. Subject to review and replacement as seen fit by the Committee, arbitrators will be offered one or two year terms at the Committee's discretion. **The Committee shall determine remuneration of the arbitrators.**

An arbitrator may be replaced at any time by mutual agreement of the signatories, temporarily or permanently in the event of their inability, refusal or failure to exercise their functions.

4. Based on experience gained at the Office of Arbitration, the senior arbitrator will be designated as Chief Arbitrator. The additional arbitrators will be designated as Second Arbitrator and Third Arbitrator. In the interests of the integrity and the continuity of the Office of Arbitration, the Chief Arbitrator will act as a mentor who may be consulted by the Second and Third Arbitrators on any matter related to the performance of their duties and functions.
5. The three arbitrators will be scheduled on a rotation basis by the Committee. New arbitrators shall be placed on the roster for two months in their first year of service and thereafter as determined by the Committee.

6. The jurisdiction of the arbitrators shall extend and be limited to the arbitration, at the instance in each case of a railway, being a signatory hereto, or of a bargaining agent, being a signatory hereto, of;

(A) disputes respecting the meaning or alleged violation of any one or more of the provisions of a valid and subsisting collective agreement between such railway and bargaining agent, including any claims, related to such provisions, that an employee has been unjustly disciplined or discharged; and;

(B) other disputes that, under a provision of a valid and subsisting collective agreement between such railway and bargaining agent, are required to be referred to the Canadian Railway Office of Arbitration & Dispute Resolution for final and binding settlement by arbitration;

but such jurisdiction shall be conditioned always upon the submission of the dispute to the Office of Arbitration in strict accordance with the terms of this agreement.

7. A request for arbitration of a dispute shall be made by filing notice thereof with the Office of Arbitration not later than the first day of the second month preceding that in which the hearing is to take place and on the same date a copy of such filed notice shall be transmitted to the other party to the grievance. As the Office releases the arbitration schedules sixty (60) days in advance.

A request for arbitration respecting a dispute of the nature set forth in section (A) of clause 6 shall contain or shall be accompanied by a "Joint Statement of Issue". A request for arbitration of a dispute of the nature referred to in section (B) of clause 6 shall be accompanied by such documents as are specifically required to be submitted by the terms of the collective agreement which governs the respective dispute.

Commencing on the second Tuesday in each month, the scheduled arbitrator shall hear such disputes as have been filed in the Office of Arbitration, in accordance with the procedure set forth in this clause 7. No hearing shall be held in the month from time to time appointed for the purposes of vacation, nor shall a hearing be held in any other month unless there are awaiting such hearing at least two requests for arbitration that were filed by the eighth day of the preceding month, except that the hearing of a dispute shall not be delayed for the latter reason only for more than one month.

8. Subject always to the provisions of this agreement and the guidelines appended hereto, the scheduled arbitrator shall make all determinations necessary for the hearing of disputes. Guidelines governing the operation of the CROA&DR may be established and/or amended from time to time as deemed necessary by the Committee.
9. No dispute of the nature set forth in section (A) of clause 6 may be referred to arbitration until it has first been processed through the last step of the grievance procedure provided for in the applicable collective agreement. Failing final disposition under the said

procedure, a request for arbitration may be made, but only in the manner and within the period provided for that purpose in the applicable collective agreement in effect from time to time, or if no such period is fixed in the applicable collective agreement in respect to disputes of the nature set forth in section (A) of clause 6, within the period of 60 days from the date decision was rendered in the last step of the grievance procedure.

No dispute of the nature set forth in section (B) of clause 6 may be referred to the Office of Arbitration until it has first been processed through such prior steps as are specified in the applicable collective agreement.

10. The **signatories agree that for the Office to function as it is intended, good faith efforts must be made in reaching a** joint statement of issue referred to in clause 7 hereof. **Such statement** shall contain the facts of the dispute and reference to the specific provision or provisions of the collective agreement where it is alleged that the collective agreement had been misinterpreted or violated. In the event that the parties cannot agree upon such joint statement, either or each upon forty-eight (48) hours notice in writing to the other may apply to the Office of Arbitration for permission to submit a separate statement and proceed to a hearing. The scheduled arbitrator shall have the sole authority [to grant or refuse](#) such application.

11. The arbitrator shall not decide a dispute without a hearing. **Each party attending a hearing shall submit to the arbitrator and the other party a written statement of its position together with the evidence and argument in support thereof a minimum four (4) business days (Monday to Friday) in advance of the scheduled hearing. Upon receipt of the arbitration briefs, if necessary, each party will follow up with the submission of a written rebuttal a minimum two (2) days in advance of the hearing. Replies will be limited to three (3) pages.**
Hearings will be scheduled for one-hour duration to allow each party to present their arguments, which includes no more than **fifteen (15) minutes for rebuttal**, if necessary, in order to ensure timely, expedited hearings.
In cases involving witnesses, hearings will be scheduled for ninety (90) minutes duration and allowing each party forty-five (45) minutes to present its arguments, including rebuttal. The parties will be required to notify the Office of Arbitration when a witness will attend no later than 10 business days after the schedule has been released.
Submission schedule:
For cases scheduled on Tuesday, parties will submit briefs on the Wednesday before arbitration week, with replies on Friday before arbitration week.
For cases scheduled on Wednesday, parties will submit briefs on the Thursday before arbitration week with replies on Monday of arbitration week.
For cases scheduled on Thursday, parties will submit briefs on the **Friday** before arbitration week with replies on Tuesday of arbitration week.
All submissions are to be filed with the Office no later than 6pm EST.

12. The parties to a dispute submitted to the Office of Arbitration may at any hearing be represented by Counsel or otherwise as they may respectively elect.

13. The arbitrator may make such investigation as they deem proper and may require that the examination of witnesses be under oath or affirmation. Each party to a dispute shall have the right to examine all witnesses called to give evidence at the hearing. The arbitrator shall not be bound by the rules of evidence and practice applicable to proceedings before courts of record but may receive, hear, request and consider any evidence which they may consider relevant.
14. The decision of the arbitrator shall be limited to the disputes or questions contained in the joint statement submitted by the parties or in the separate statement or statements as the case may be, or, where the applicable collective agreement itself defines and restricts the issues, conditions or questions, which may be arbitrated, to such issues, conditions or questions. The Arbitrator's decision shall be rendered in writing, together with written reasons therefor, to the parties concerned within **45** calendar days following the conclusion of the hearing unless this time is extended with the concurrence of the parties to the dispute, or unless the applicable collective agreement specifically provides for a different period, in which case such different period shall prevail.

The decision of the arbitrator shall not in any case add to, subtract from, modify, rescind or disregard any provision of the applicable collective agreement.

15. Each decision of an arbitrator that is made under the authority of this agreement shall be final and binding upon the railway, the bargaining agent and all the employees concerned.
16. Through the Office of Arbitration, the arbitrator shall report the decision in each case and the reasons for such decisions to all signatories hereto.
17. The Office of Arbitration shall maintain a complete and accurate record of all disputes submitted to it and of all decisions made by an arbitrator or other dispositions respecting them, including the signed originals of all such decisions.
18. The signatories respectively shall do all such acts and things as are necessary to enable the arbitrators to make proper findings respecting the matters in dispute and no signatory shall obstruct, delay or prevent the arbitrators from proceeding with the matter before them or from making their decision.
19. **(A)** The expenses of operating and administering the Office of Arbitration, including the expenses of the arbitrators and all necessary clerical and technical assistance shall be borne one-half by the Appendix "A" signatories and one-half by the Appendix "B" signatories.

(B) At the commencement of each year, the Committee shall estimate the total expenses of maintaining the Office of Arbitration for the ensuing year and, at that time and from time to time thereafter during the year, shall make interim preliminary assessments equally upon the Appendix "A" signatories and the Appendix "B" signatories sufficient to defray current expenses currently. At the end of each year the total annual expenses

actually incurred shall be apportioned as set out and all necessary credits and debits shall be made accordingly.

(C) Separate from the operating and administrative costs, each of the signatories hereto shall contribute proportionately to the monthly remuneration of the arbitrator based on their usage on a case-by-case basis during each quarter (September to November; December to February; March to May; June to August). The General Secretary shall monitor usage each quarter and such fees shall be added to the operating and administrative costs (clause 19(A)).

20. **(A)** This agreement shall be reviewed on an annual basis by the signatories hereto, which review shall take place on or before the first day of July in each year. At the time of this review the appointment of the arbitrators shall be made, subject to the provisions of clauses 3, 4 and 5 hereof, and any changes or alterations shall then be implemented as may be mutually agreed upon between the signatories hereto.

(B) In the event that the signatories hereto are unable to reach agreement on the appointment of suitable arbitrator(s), the matter may be settled in the following matter:

- i. **Within seven (7) days of the date that the signatories are unable to reach agreement, Signatories "A" and "B" will provide to the Federal Mediation and Conciliation Services (FMCS) three (3) names of their "suitable" list of arbitrators.**
- ii. **The Committee will request that FMCS make a selection from the list of up to six (6) proposed candidates submitted by the signatories.**
- iii. **FMCS will give preference to arbitrators who have had prior CROA experience. The decision of FMCS will be final and binding.**
- iv. **Such appointed arbitrators shall be required to conform to the rules hereto and guidelines as established by the Committee.**

21. Any other recognized bargaining agent, acting on behalf of the employees of a railway company which is a signatory hereto and any non-signatory railway company together with some or all of the bargaining agents which represent its employees may, from time to time, be permitted to accede to these presents and, except as provided below, to be regarded for all the purposes hereof as if signatories hereto and as if their respective names appeared in Appendix "A", in the case of railway companies, or in Appendix "B" in the case of bargaining agents, as the case may be, by filing a suitable written instrument of accession and attornment at the Office of Arbitration provided, however, that the validity and operation of every such instrument shall be conditioned upon the prior concurrence and acceptance of it by all the signatories hereto as evidenced by the subscription or endorsement by each of the said instrument before it is filed.

22. Railway companies and bargaining agents which accede to these presents, as provided for in clause 21 hereof, will not have the right or power to terminate this agreement. However, any such party may, following the first anniversary of its accession and attornment, withdraw from this agreement as of the 31st day of August in any year during the term hereof by giving at least 60 days' notice in writing of its intention to withdraw to

the other parties (which notice shall be given by written correspondence) and by filing concurrently therewith a copy of such notice with the Office of Arbitration.

23. Following the meeting held on September 13th, 2023, the administrative committee moves to approve and adopt the new MOA mentioned above, to take effect on November 1, 2023.

SIGNED on this 1st day of November, 2023

APPENDIX "A" SIGNATORIES



M. W. Becker
Vice President & Chief Labour Officer
Canadian Pacific Kansas City Railway
Calgary, Alberta



S. McGuire
Sr. Director, Labour Relations
Canadian National Railway Company
Montreal, Quebec

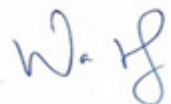
APPENDIX "B" SIGNATORIES



B. W. Kennedy
National Representative
Unifor
Edmonton, Albert



N. Lapointe
Vice-President, Financial Secretary-Treasurer
United Steelworkers Local 1976
Montreal, Quebec



W. Phillips
President
Teamsters Canada Rail Conference -
Maintenance of Way Employees Div.
Ottawa, Ontario



P. Boucher
President
Teamsters Canada Rail Conference
Trenton, Ontario

APPENDIX "C"

POLICIES AND GUIDELINES

The following is a statement of the policies and guidelines of the Canadian Railway Office of Arbitration & Dispute Resolution (CROA&DR) concerning the filing and scheduling of disputes for arbitration and certain hearing procedures. It is not intended as an interpretation of the Memorandum of Agreement establishing the Canadian Railway Office of Arbitration & Dispute Resolution nor any other agreement between the parties. These guidelines are intended for the assistance of the parties and may be subject to the discretion of the arbitrator in any given case.

Request for Arbitration

It is the responsibility of the parties to submit requests for arbitration in accordance with the Memorandum of Agreement as well as the pertinent collective agreement. It is not the responsibility of the Office of Arbitration to poll the parties to ensure proper notice has been given to all concerned that a particular grievance has been filed.

When filing a request for arbitration, be it ex parte or jointly, the party filing the request must "on the same date" transmit a copy of such request to the other party to the grievance.

Under the law of arbitration in Canada, other unions whose interest may be affected by a jurisdictional or other claim are generally entitled to notice of proceedings whose outcome may affect their rights. It is not the responsibility of the Office of Arbitration to protect the parties in respect of possible difficulties of natural justice, adjournments and/or judicial review of decisions. Therefore, all requests for arbitration of grievances dealing with such issues as work ownership or union dues should include reference to the interests of other bargaining agents and, where applicable, be copied to them. The CROA&DR is also to be advised of the interest of a third party in order that proper notice of the scheduling of the arbitration may be sent to all parties.

Preliminary Objections

Preliminary objections concerning the arbitrability of a dispute should be filed as soon as possible after the dispute is submitted to the Office of Arbitration. The objection must be in writing, outlining the reasons for the objection. A copy of the objection is also to be filed with the other party to the dispute at the same time and in the same manner.

If a request for the hearing of a preliminary objection is made after the grievance is filed in the Office of Arbitration and before the matter has been scheduled for hearing, the hearing shall be solely to deal with the preliminary objection. However, if a preliminary objection is filed after a dispute has been scheduled for hearing, the hearing shall be for the purpose of dealing with both the preliminary objection and the merits of the grievance.

Postponements / Adjournments

In all but the most extraordinary of circumstances, postponements or adjournments will not be granted except with the agreement of both parties to a dispute. All requests for postponement should be made in writing, with a copy sent to the other party to the dispute.

If before, during or after the hearing of a grievance it appears to the Arbitrator that an affected third party, or parties, has, or may have, a legal interest in the outcome of the proceedings, the Arbitrator may adjourn the proceedings and direct that notice be provided to that party or parties. The affected party will be afforded the appropriate opportunity to establish its interest and, if such interest is established, to participate as an intervener, to the extent of their interest.

Scheduling

Disputes are scheduled within the monthly allotments afforded to each of the signatories in Appendix "B" of the memorandum of agreement. As a general principle, all disputes filed with the Office of Arbitration are scheduled on a "first-in first-out" basis. An exception to this are disputes involving termination of employment which have a priority in scheduling. As well, given the number of cases which can be on file with the CROA&DR at any given time, the scheduling of cases is also done on the basis of equitable distribution among the member organizations, and also among the various parts of each organization.

The parties to a dispute can mutually agree to request that the order of scheduling of their cases be other than the order in which they were submitted. They can also mutually request the substitution of already scheduled cases with other cases. Approval of such substitution will be dependent on available hearing time as the current method of scheduling involves a certain amount of "double booking" of time slots due to the present high level of "no shows".

In instances where Appendix "B" signatories will not utilize their full allotment during a given month, the General Secretary will, alternatively, schedule disputes that are awaiting scheduling by other signatories using the "first-in first-out" principle based on the dates that disputes were referred to the Office.

Legal Counsel

When legal counsel is to be used, advice is to be given to the other party to the dispute and the Office of Arbitration as soon as possible. When notice of intent is received by both the CROA&DR and the other party before the case has been scheduled, thus giving at least one month's notice, requests for adjournments by one party to retain and instruct counsel will not be granted, absent exceptional circumstances.

Language of Arbitration

The word "language" refers only to Canada's two official languages.

It was agreed by the Committee that most members are national in scope. They have, therefore, the resources to deal with arbitration hearings in either or both languages. As a result, it was decided that it would be unnecessary to incur the cost of obtaining professional translation services.

While the language of an arbitration hearing is the choice of the two parties to the dispute, there are some rules which the Committee has agreed are to be followed.

When submitting a request for arbitration, the request and accompanying statement of issue (when such is required pursuant to Clause 7 of the memorandum of agreement) are to be submitted in the language in which the parties have mutually agreed the arbitration will be heard. The award will normally be issued in that language.

Should the agreed-upon language be changed, by mutual consent, after submission of the request to the Office of Arbitration, a translation of the previous request is to be provided to the Office prior to the hearing.

When one party anticipates that a potential witness, or witnesses, will give evidence on its behalf in the other language, that party will notify the other as soon as possible after the hearing date is set, but no later than 48 hours prior to the hearing. For example, if the dispute is to be heard in French and a witness will testify in English, the party calling the witness will so inform the other party.

Inasmuch as the arbitrator sits as a neutral third party at an arbitration hearing, and is not a party to the dispute, it is not appropriate for either party to expect him, or her, to provide translation services.

Audio-Visual Equipment

Any party requiring audio-visual equipment at a hearing is responsible for advising the General Secretary that such equipment will be required and for providing their own equipment. Should assistance be required in this matter, the General Secretary will arrange to have such equipment made available with the cost of renting such equipment to be borne by the requesting party.