

IN THE MATTER OF AN ARBITRATION

BETWEEN

CANADIAN PACIFIC RAILWAY

(the “Company”)

and

TEAMSTERS CANADA RAIL CONFERENCE

(the “Union”)

**GRIEVANCES CONCERNING LAMBTON YARD
(THE BELLEVILLE RUN-THROUGH AGREEMENT AND THE
BUFFALO/TORONTO ESR)**

SOLE ARBITRATOR: John Stout

For the Company:

Brian Scudds - Manager Labour Relations

Chris Clark – Assistant Director Labour Relations

For the Union:

Denis Ellickson - Caley Wray

John Campbell - General Chairman, LE-East

Wayne Apsey - General Chairman LTY-East

Dennis Psychogis - Local Chairman CTY-East

Chris Yeandel - Local Chair LE-East

HEARING HELD IN MONTREAL, QUEBEC ON JANUARY 21, 2017

AWARD

I. INTRODUCTION

[1] I was appointed by the parties to hear and resolve a number of outstanding grievances pursuant to a Memorandum of Agreement (MOA) dated April 12, 2016.

[2] The MOA provides that the grievances will be heard on an expedited basis and presented in accordance with the Canadian Railway Office of Arbitration & Dispute Resolution (CROA & DR) rules and style.

[3] This award addresses grievances filed by the Teamsters Canada Rail Conference's (the "Union" also referred to as "TCRC") two eastern General Committees of Adjustment ("GCAs"). The two eastern GCAs represent the Union's running trade members employed by the Company throughout the region known as Eastern Canada (Thunder Bay east).

[4] There are two collective agreements relevant to this matter. One collective agreement applies to the Company's eastern employees represented by the TCRC and classified as Conductor, Assistant Conductor, Bagperson, Brakeperson, Car Retarder Operator, Yard Foreman, Yard Helper and Switchtender (CTY-East). The other collective agreement applies to the Company's eastern employees represented by the TCRC and classified as Locomotive Engineers (LE-East).

[5] Both parties filed extensive written briefs in accordance with the CROA & DR rules and style.

II. THE CURRENT DISPUTE

[6] Unfortunately, the parties were unable to agree upon a Joint Statement of Issue. The Union filed an Ex Parte Statement of Issue. The Union's Ex Parte Statement of Issue provides as follows:

DISPUTE:

Appeal of the Company's unilateral change to the Run Through Pool and Toronto/Buffalo ESR Pool operations pertaining to the Toronto and Smiths Falls based crews forced to work outside the scope of the applicable Agreements.

STATEMENT OF ISSUE:

The Company has implemented changes to the nature of the operation of trains that operate in Run Through and ESR service that encompass employees based in Smiths Falls and Toronto. The Union has filed Step 2 and Step 3 grievances regarding the substantial adverse effects that its members feel due to this wholesale change, including denied claims when crews were instructed to work outside the parameters of the Agreements.

UNION'S POSITION:

The Union contends that the Company's initiative violates the terms of the Belleville Run-Through Agreement, the Belleville run-through initiative of September 7th, 2005, Letter of Understanding dated May 20th, 2008 by Manager of Yard Operations M. Waver and by S. Nelson, Road Foremen in Smiths Falls, Material Change letter of June 17, 2013, and the Toronto Buffalo ESR Agreement.

Language is clearly defined in the Belleville Run-Through Agreement, "...trains will originate and terminate at Toronto Yard", as well as in the ESR Agreement, "Trains operated from Toronto (Lambton) to Buffalo..."

Therefore, Run-Through crews should not be used to operate to Lambton, and the Toronto-Buffalo ESR Pool Agreement had moved the home terminal for ESR trains to Lambton (from Toronto). These crews are running trains to locations that are not included in the parameters nor past practice as clearly outlined.

The Union has advanced a grievance on behalf of Smiths Falls and Toronto employees, requesting the Company cease and desist from this initiative and to pay all associated denied claims.

The Union seeks a declaration that the Company has breached the aforementioned Agreements and an order that the Company cease and desist from its ongoing breaches thereof. In the alternative, the Union seeks a declaration that the Company is estopped from directing Run Through and ESR crews to perform this work.

The Union seeks an order that the Smiths Falls and Toronto crews be compensated for working beyond the limits of the Collective Agreement. The Union further seeks compensation for the spare yard employees who were used to shuttle the trains between Toronto Yard and Lambton Yard. In addition, the Union claims such other relief that the Arbitrator deems necessary in the circumstances.

The Company disagrees with the Union's position.

[7] The Company chose not to file an Ex Parte Statement of Issue. The Company's position is set out extensively in their brief. The Company's position can be briefly summarized as follows:

- The Union has not demonstrated any violation of the collective agreements.
- The Company asserts that crews are permitted to deliver or receive their train at any location within the initial or final terminal. In this case Lambton Yard is within the Toronto Terminal and therefore no violation of the collective agreements has occurred.

III. BACKGROUND FACTS

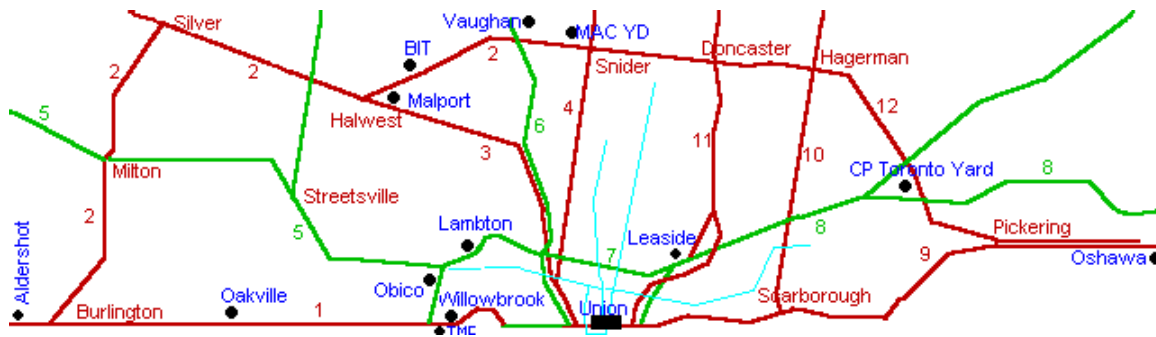
i. The Toronto Terminal

[8] The current agreed upon Toronto Terminal switching limits are between the following points:

- Belleville Subdivision – 164.5
- Havelock Subdivision – 148.6
- MacTier Subdivision – 30.2
- Galt Subdivision – 15.0
- C.N. Oakville Subdivision – 9.3

[9] Toronto Yard is located in the east end of the city of Toronto (near Sheppard Ave. and McCowan Rd.) at MP 197 - 198.2 on the Belleville Subdivision. Lambton Yard is located in the west end of the city of Toronto (near St. Clair Ave. West and Scarlett Rd.) at MP 5.8 on the Galt Subdivision. Obico Yard is also located in the west end of Toronto (near Kipling Rd. and Lakeshore Ave.), south west of Lambton Yard. Toronto Yard, Lambton Yard and Obico Yard are within the Toronto Terminal.

[10] For ease of reference a map of the area is produced below:



[11] Article 14.03 of the CTY-East collective agreement provides as follows:

14.03 The arrival time at a general terminal, such as Montreal or Toronto, shall be the time at which a crew arrives or passes their regular freight yard regardless of where the train is delivered, provided that no payment will be made in the event of a later arriving crew being called at the regular freight yard before the return to that point of the earlier arriving crew.

[12] Article 10.02 of the CTY-East collective agreement provides, in part, as follows:

Conductor-Only crews performing switching at the initial terminal or required to pickup a car or block of cars within the terminal, at the originating yard or to make one stop at another yard en route to departure from the initial terminal to pick up a car or block of cars will receive the Conductor-Only premium payment.

A Conductor-Only crew required to perform any combination of the above at one or more locations within the terminal will be compensated on the minute basis from the time the crew commences such work until such time as the train is together for final departure, with a minimum payment of one hour. This work is not a stop en route.

[13] Attached and forming part of the CTY-East collective agreement is an October 1, 1998 Letter Re: Expansion of the Eastern Boundaries of the Toronto Terminal, which provides in part as follows:

This has reference to our discussions on July 17, 1998, concerning the expansion of the Eastern Boundaries of Toronto Terminal to permit the non-stop run-through operation of trains between London and/or Hamilton/Buffalo, through to Oshawa.

It is agreed that trains operating between Oshawa and London and/or Hamilton/Buffalo, may run-through Toronto Terminal in a non-stop operation.

Existing designated OMTS points and extended switching provisions, as outlined in local rules and current operating practices, are not affected by this agreement.

The Company maintains the right to yard trains anywhere within Toronto Terminal, and will require train crews to yard trains anywhere within Toronto Terminal.

ii. The Belleville Run-Through Agreement

[14] On May 14, 1968, the Company gave the Union notice of its desire to implement a run-through for freight crews between Toronto, Ontario and Smiths Falls, Ontario.¹ The parties agreed that the proposed run through constituted a material change in working conditions pursuant to the collective agreements in place at the time.

[15] The effect of the Company's proposed change was to eliminate Trenton, Ontario as an away-from-home terminal for crews from Toronto and Smiths Falls. The parties agreed that both Toronto and Smiths Falls were to be retained as home terminals. Furthermore, Smiths Falls would be the away-from-home terminal for Toronto crews and Toronto would be the away-from-home terminal for Smiths Falls crews.

[16] The material change provisions of the collective agreements provide for a process of negotiating measures to minimize the adverse effects on employees

¹ At the time the employees were represented by the predecessor trade unions, the United Transportation Union (representing Conductors Yardmen, Trainmen and Locomotive Firemen) and the Brotherhood of Locomotive Engineers.

affected by the material change. The parties were able to reach an agreement on some, but not all, of the measures. The parties proceeded to arbitration on the outstanding issues. Arbitrator Weatherill heard the matter and issued an award on July 2, 1970. Arbitrator Weatherill directed the parties to enter into an agreement that reflected their earlier agreements and his determinations.

[17] Subsequently, the parties entered into an agreement that became known as the Belleville Run –Through Agreement (the “Belleville RTA”).

[18] The Union asserted that the reference to “Toronto” in the Belleville RTA was Toronto Yard. The Union advised that crews operating under the Belleville RTA always operated between Smiths Falls and the Toronto Yard.

[19] The Union indicated that on some occasions a crew would need to proceed west (past Toronto Yard) to Kennedy Road (MP 199.5 Belleville Subdivision) and then reverse into Toronto Yard. In these circumstances, the final destination was still Toronto Yard.

[20] The Union also noted one other exception when certain “assigned trains” were operating to Obico Yard. The Union advised that the exception was agreed upon in 1970 and it permitted certain assigned intermodal trains to run past Toronto Yard to Obico Yard.

[21] The Union produced a letter dated May 3, 1985 from the Local Chairman to a Company Superintendent advising that Toronto Yard was the away-from-home terminal for Smiths Falls crews. The letter addresses Union concerns relating to run-through crews operating past the Toronto Yard. The letter acknowledges the Obico exception, and maintains that all other run-through trains may only provide work between their initial and final terminals (i.e. Smiths Falls and Toronto Yard).

[22] The Union also produced the December 6, 2002 Minutes of the Belleville Run-Through Committee (“BRTC”). The Minutes of the BRTC December 6, 2002 meeting, reflect an exchange between the Union and the Company. The pertinent discussion is set out below:

Mr. Hewitt asked Mr. McLellan if he had read the letter of understanding, in the Run Through Agreement with respect to the handing off of Run Through Train at Toronto Yard, Mr. McLellan said he had and agreed that, the practice of crews being sent to other location in Toronto terminal would stop, and he would bring it to the attention of the OC Center and Mr. Blotsky.

[23] On June 11, 2004 the Toronto Manager Yard Operations wrote an email to the Union confirming that the Company had sought the Union’s “consent,” that for the period of time from June 11 to June 14, 2004, westbound mainline trains from Smiths Falls be yarded within the Toronto Terminal at locations west of Toronto Yard.² Train crews who were required to yard their train west of Toronto Yard during this four day period were compensated 100 miles.

[24] In 2005, the Company served notice of material change on the Union proposing to move the run-through pool from Toronto to the full pool to be manned from Smiths Falls. A Memorandum of Agreement was signed on September 7, 2005 (the “September 7, 2005 Agreement”). Relevant to this matter is the following provision:

- 5) One train pair, currently trains 238 & 239, may, at the Company’s discretion, be operated into and out of Obico as a single fixed mileage tour of duty.

[25] The September 7, 2005 Agreement provides that it “supersedes any conflicting application/article contained within” the Belleville RTA. The September 7, 2005 Agreement also provides that the “administration” of the agreement was to be done locally and any unresolved issues may be advanced to the General Chairman and the General Manager. Finally, the parties may give 30 days notice

² This was in addition to train 239 and Expressway assignments.

to review the September 7, 2005 Agreement and it “may be changed or modified by the parties upon mutual agreement.”

[26] Subsequent to signing the September 7, 2005 Agreement, the parties issued a joint “Clarifying Document”.

[27] On May 20, 2008 the Smiths Falls Manager Road Operation and the Local Chairmen entered into a “letter of understanding”, which provided as follows:

This is a letter of understanding that run-through pool crews will not be required to operate west of Mi. 199.5 Belleville Subdivision with the exception of handling trains 230/231 to and from Obico Yard.

It is also understood that run-through pool crews operating west of Mi. 199.5 Belleville Subdivision on train 231 in excess of seven and one half hours on duty when train arrives at Mi. 195.2 Belleville Subdivision having served proper rest notice to the company are not required to handle train 231 to Obico Yard.

[28] On the same day the Toronto Manager Yard Operations entered into a similar letter of understanding.

iii. The Buffalo/Toronto Expedited Service Run

[29] On June 17, 2013 the Company provided the Union with notice of material change advising of their intention to establish Expedited Service Runs (ESR) between London, Ontario and Buffalo, New York and Toronto, Ontario and Buffalo. As a result of the change, all trains running south from Toronto would run-through Hamilton, Ontario into Buffalo and trains from London that traditionally ran to Hamilton would also run-through into Buffalo. In their notice, the Company noted the following:

While not necessarily an item generally categorized as a material change, it is important to note that Toronto South Pool Crews operating in ESR service will report to Lambton (on duty).

[30] On September 12, 2013, the parties entered into a Memorandum of Agreement concerning the Expedited Service Runs between London and Buffalo Terminals and the Toronto and Buffalo Terminals (the “ESR Agreement”). The following provisions of the ESR Agreement are worth mentioning:

- 1.1 The intent of this agreement is to allow for the operation of trains in Expedited Service Run Service (ESR) between London and Buffalo and Toronto and Buffalo without the need to change crews at Hamilton. The intent is to have ESR crews make it in and off duty within 10 hours.
- 1.2 Trains operated from Toronto (Lambton) to Buffalo or London to Buffalo in ESR service, may run under assigned service terms and conditions or may operate under unassigned freight service terms and conditions, the Company, through consultation with the Union, will determine the most effective method of operation.
- ...
- 1.4 For Toronto ESR crews, their home terminal will be Toronto and their Away-From-Home Terminal will be Buffalo.
- ...
- 1.6 Unless specifically superseded in this agreement, the provisions of the Collective Agreement will apply.
- ...
- 13.6 Spare crews at Toronto who are required to report to Lambton in order to crew ESR trains will be provided a mileage allowance between Toronto Yard and Lambton for a period of two years, from the date of implementation.
- ...
- 15.5 Any dispute respecting the interpretation, application or alleged violation of this agreement may be progressed as provided for in Step 3 of the Grievance Procedure.

[31] Attached to the ESR Agreement is Appendix D, which outlines the “Calling procedures”. The Toronto ESR Calling Procedures indicates as the scope being “ESR Trains Running between Lambton and Buffalo Terminal.”

[32] Subsequent to entering into the ESR Agreement and prior to November 2015, crews operating on the Buffalo/Toronto ESR have operated their trains into and out of Lambton Yard.

iv. The events giving rise to the grievances

[33] On November 3, 2015 the Company wrote to the Union advising as follows:

Please be advised that the following Toronto Local Letter is hereby cancelled subject to the 30 day cancellation clause:

1. Subject: Re: Run-through pool crews operating west of Mi. 199.5 Belleville Sub Letter dated May 20, 2008

[34] The Union responded by email that same day advising as follows:

This is not a Local Rule but rather a letter of understanding as part of the Run through agreement. There is no cancellation clause and therefore, not subject to cancellation.

[35] The Company did not respond to the Union's email.

[36] At approximately the same time, the Company began requiring crews on the Buffalo/Toronto ESR to run to Toronto Yard instead of Lambton Yard. The Company did not provide the Union with notice of this change.

[37] On December 17, 2015, the Union filed a joint Step 2 appeal under the CTY-East and LE-East collective agreements. The relevant portions of the grievance provides as follows:

At issue is the Company's unilateral decision to operate trains 143 from Smiths Falls through Toronto Yard for a crew change at Lambton, using both Toronto and Smiths Falls based crews, contrary to the Belleville run-through Agreement, the Belleville run-through initiative and past practice. And, conversely, operating trains 142 with a Toronto based crew, from Buffalo New York through Lambton for a crew change at Toronto Yard, contrary to the ESR Agreement.

The Union contends that the Company is in violation of the Belleville run-through Agreement by operating trains 143 beyond Toronto Yard to Lambton. The run-through agreement stipulates "...**trains** (emphasis added) will originate and terminate at Toronto Yard." This dictates that the trains stop at Toronto Yard. The Run-through Agreement had provisions to allow trains 928/929 to operate beyond Toronto Yard in order to service Obico intermodal yard. As Obico yard is now closed, there are no trains needing to

operate beyond Toronto Yard. This fact is recognized in the Belleville run-through initiative of September 7th,2005 as well as a letter of understanding of May 20th,2008 by Manager of Yard Operations M. Waver and by S. Nelson, Road Foremen in Smiths Falls.

The Union also contends that the Company is in violation of the Toronto Buffalo ESR Agreement. Under the Scope and Intent, item 1.2 of the Agreement states "Trains operated from Toronto (Lambton) to Buffalo..." The ESR did not contemplate trains running to Toronto Yard. Had this been the case, there would have been no need to move the home terminal to Lambton as indicated by way of the Material Change letter of June 17, 2013.

The Superintendent of Toronto at the time, Ms. Tina Sheaves, agreed to extra yards to shuttle trains 142/143 between Lambton and Toronto Yard, knowing run-through crews could not be used to operate to Lambton and that the Toronto-Buffalo ESR pool had moved the home terminal for ESR trains to Lambton.

The Union further contends that the Company is estopped from unilaterally changing the operations as described above.

[38] The Company did not respond to the grievance. So the Union pursued the grievance to Step 3 on March 17, 2016.

[39] At both Step 2 and 3, the Union sought payment of all claims and requested that the Company establish an abeyance code for all claims. The Union did not specifically request a payment of 100 miles per trip.

[40] The Company responded to the Union's grievance on May 16, 2016.

This is in response to the aforementioned Step 3 appeal concerning the operation of trains from Smiths Falls to Lambton for crew change and from Buffalo New York to Toronto for a crew change.

These trains were all delivered to a location within the Toronto Terminal. This is part of the operation of these trains. At no point in the operation in question did the crews leave the Toronto terminal with the train. Accordingly the Company cannot agree a violation of the agreement has occurred.

Based on the foregoing, the Company cannot see a violation of the Collective Agreement and your grievance is respectfully declined.

[41] The Union points out that the Company sought certain changes to ESR agreements in the most recent round of bargaining. The bargaining was resolved

by an interest arbitration award of the Honourable George Adams Q.C. dated December 7, 2015 (the “Adams Award”). The Adams Award provided for a number of changes to ESRs, but specifically excluded Belleville.

IV. DECISION

[42] In normal circumstances, crews can operate their trains to any location within a home or away-from-home terminal. This is accepted in the provisions of the collective agreement noted earlier and in the jurisprudence, see for example **CROA 194**.

[43] Where this case differs from the normal circumstances is the fact that the Union relies on the Belleville RTA and the ESR Agreement. These two agreements were negotiated by the parties pursuant to the material change provisions of the collective agreements.

[44] It is well accepted that absent any cancellation clause, neither party can unilaterally resile from agreements negotiated pursuant to the material change provisions of the collective agreements, see for example *Canadian Pacific Railway and teamsters Canada Rail Conference (Sparwood Material Change)* October 13, 2015 (Hodges).

[45] In a July 21, 2014 award between these same two parties, *Canadian Pacific Railway and Teamsters Canada Rail Conference 2014* CanLII 77078 (ON LA), Arbitrator Michel Picher indicates as follows:

Thirdly, where agreements have been made by the parties, as for example in the Material Change Agreement relating to Souris, Manitoba where directional pools are expressly established and no cancellation provisions is provided, it is not open to the Company to unilaterally cancel or abolish those directional pools. Any change in that regard must await renegotiation of the collective agreement.

[46] In other words, absent a cancellation provision, these agreements cannot be unilaterally cancelled. Any changes to the agreements must be done through negotiations and mutual agreement.

[47] The Belleville RTA does not contain a cancellation provision. The September 7, 2005 Agreement provides for 30 days written notice to “review”. However, any change or modification must be by “mutual agreement.” Therefore, neither party is at liberty to unilaterally alter or cancel these agreements. Any change or modification must be done through negotiations and mutual agreement.

[48] The May 20, 2008 letters of understanding are, in my view, clearly agreements related to the Belleville RTA and made in accordance with the September 7, 2005 Agreement, which specifically contemplates the administration of the agreement being done locally. In my opinion, the May 20, 2008 letters of understanding are not “local agreements” but rather are an understanding with respect to the administration of the Belleville RTA (as amended by the September 7, 2005 Agreement). As such, these letters of understanding also can not be unilaterally altered or changed. As with the Belleville RTA and September 7, 2005 Agreement, these letters of understanding can only be changed through negotiations and mutual agreement.

[49] This brings me to the Obico trains exception that has been in effect since approximately 1970. The Belleville RTA, as amended by the September 7, 2005 Agreement, specifically provides that one train pair (at the time trains 238 and 239) may, at the Company’s discretion, be operated into and out of Obico Yard as a single fixed mileage tour of duty. There would be no need for such language if the Belleville RTA permitted any train to operate beyond Toronto Yard. The logical conclusion is that this language is included to provide an exception to the agreement that the trains operating under the Belleville ESR will have a final destination of Toronto Yard.

[50] The evidence of past practice provided by the Union also supports this interpretation.

[51] Accordingly, it is my finding that all trains operating under the Belleville ESR, with the exception of “one train pair”, must have Toronto Yard as their final destination (i.e. not operate west to Lambton Yard).

[52] I also find that the one exception must still apply and that the Company may, at their discretion, operate one pair into and out of Obico as a single fixed mileage tour of duty.

[53] I see no reason why the Company could not also operate the same pair of trains, under the same circumstances (a single fixed mileage tour of duty) into Lambton Yard, which is east of Obico Yard and closer to Toronto Yard.

[54] Turning to the ESR Agreement, I note that absent the reference to “Lambton,” the Company could require trains to run to Toronto Yard. However in this case, the ESR Agreement clearly indicates that the trains will be operated from Toronto (Lambton) to Buffalo. The reference to Lambton must have some meaning.

[55] In my opinion, the meaning is clear that all Buffalo/Toronto ESR trains will run between Lambton and Buffalo Terminal. There would be no reason to specify Lambton in the ESR Agreement otherwise. Furthermore, the Toronto ESR Calling Procedures, attached to the ESR Agreement, clearly state that the trains will be “running between Lambton and Buffalo Terminal.” Once again, there would be no reason to mention Lambton if the ESR trains could operate anywhere in the terminal. Instead, the parties could have referenced the ESR trains as running between “Toronto and Buffalo Terminals.”

[56] I also note that the notice of material change dated June 17, 2013 indicates that “Toronto South Pool Crews operating in ESR service will report to

Lambton (on duty)". In addition, the evidence is clear that prior to November 2015, the crews operated into and out of Lambton Yard.

[57] As with the Belleville RTA, any alteration or change to the ESR Agreement must be made through negotiations and mutual agreement.

[58] Finally, the Company failed to establish an abeyance code as requested by the Union. I agree with the Union that the Company ought to have created an abeyance code. The failure to establish an abeyance code violates Appendix 30. It would be unreasonable to allow the Company to profit from their breach of a collective agreement obligation. In these circumstances, I agree with the Union that time limits ought to be extended for crews to file claims.

V. CONCLUSION

[59] After carefully considering the submissions of the parties, I make the following findings:

- Crews operating under the Belleville RTA are not required to operate to Lambton Yard, save and except one train pair that may, at the Company's discretion be operated as far as Obico as a single fixed mileage tour of duty.
- Crews operating under the ESR Agreement are not required to operate past Lambton Yard.

[60] I order the Company to cease and desist operating trains operating trains contrary to my findings. I order the Company to create an abeyance code for all claims arising from their conduct.

[61] I agree with the Union that the Company's failure to create an abeyance code should not prejudice any employee who might have a claim. Therefore, I order that the time limits for filing a claim will be extended and order the Company to provide the Union with any necessary records to establish entitlements.

[62] In terms of damages, I accept the Company's position that they had no opportunity to discuss the 100 mile compensation request. Therefore, I remit that issue to the parties. If the parties cannot agree on the damages then they may provide me with submissions and I will make the appropriate orders.

[63] Finally, I remain seized to address any issues arising from my award and to address any issue fairly raised by the grievances but not addressed in this award, including but not limited to the quantum of damages arising for the Company's conduct.

Dated at Toronto, Ontario this 7th day of February 2017.

A handwritten signature in dark ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

John Stout - Arbitrator