

**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:**

David Pezzaniti: Manager Labour Relations (Calgary)

Jason Wilkerson: General Manager (Eastern Division)

Caroline Gilbert: Manager Labour Relations (Montreal)

**For the Union:**

Ken Stuebing: Caley Wray

John Campbell: General Chairman, LE-East (Peterborough)

Wayne Apsey: General Chairman, CTY-East (Smith Falls)

Ed Mogus: Sr. Vice General Chairman, CTY-East (Oakville)

Doug Edward: Sr. Vice General Chairman, CTY-West (Medicine Hat)

**HEARING HELD IN TORONTO, ONTARIO ON JULY 26, 2017**

## **SUPPLEMENTAL AWARD**

### **INTRODUCTION**

[1] This award is supplemental to an award I issued on February 7, 2017. The February 7, 2017 award addressed a dispute between the parties relating the Company's November 2015 decision to require Belleville Run Through Pool crews to operate beyond Toronto Yard (near Sheppard Ave. and McCowan Rd.) to Lambton Yard (near St. Clair Avenue West and Scarlett Rd.). The Union alleged, among other things, that the Company violated the Belleville Run Through Agreement (the "Belleville RTA").

[2] In my February 7, 2017 award, I made the following findings:

[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.

[3] The current dispute arises from the Company, operating one train pair under the Belleville RTA between Toronto Yard and Lambton Yard.

[4] A conference call was held on June 5, 2017 to address the dispute. During the conference call it was agreed that the parties would make further submissions at a hearing to be held on July 26, 2017.

[5] The parties filed briefs in accordance with the CROA & DR rules and style. The parties also made oral submissions at the July 26, 2017 hearing.

## **DECISION**

[6] After carefully considering the parties submissions, I agree with the Company that they are permitted to operate one pair of trains as a single fixed mileage tour of duty under the Belleville RTA into Lambton Yard.

[7] At the original hearing, the parties made extensive submissions with respect to the matter in dispute. Those extensive submissions included submissions relating to what I refer to as the “Obico exception”.

[8] The Union noted, in their original material, that since approximately 1970, there has been “one notable exception” with respect to certain assigned trains operating beyond Toronto Yard into Obico Yard. The Union indicated that this exception was related to intermodal assigned trains. The Union also referenced their grievance, which indicates that “Obico Yard is now closed there are no trains needing to operate beyond Toronto Yard”.

[9] The Company took the position that they could unilaterally cancel the Belleville RTA and that crews were permitted to deliver and receive their trains at any location within the Toronto Terminal, which included Lambton Yard. The Company referenced the Obico exception in their brief, noting that Lambton Yard was closer to the Toronto Yard than Obico Yard.

[10] In my February 7, 2017 award, I noted the following with respect to trains operating beyond Toronto Yard under the Belleville RTA:

[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.

[11] It appears to me that the Union is, in effect, asking me to revisit my earlier finding with respect to the Obico exception. In my view, I am *functus* on this issue. The February 7, 2017 award is clear that the Obico exception applies and the Company may operate a pair of trains (under the same circumstances) into Lambton Yard.<sup>1</sup>

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<sup>1</sup> The principle of *functus officio* dictates that where an arbitrator has fully exercised their authority and finally determined the matter or matters submitted to arbitration, then their authority or jurisdiction is exhausted, see *Chandler v. Alberta Association of Architects* [1989] 2 S.C.R. 848

[12] Even if I was not *functus*, I continue to be of the view that there is no reason why the Company should not be able to operate a similar pair of trains into Lambton Yard, which is east of Obico Yard and closer to Toronto Yard.

[13] As I noted in my February 7, 2017 award, normally crews can operate their trains to any location within a home or away-from-home terminal. In this case, the Toronto Terminal includes (amongst others) the Toronto Yard, the Lambton Yard and the former Obico Yard. I found that the Belleville RTA, which was negotiated pursuant to the material change provisions of the Collective Agreements, provided that trains operating under the Belleville RTA would have a final destination of Toronto Yard. I also found that one exception applied with respect to one pair of trains operating into and out of Obico Yard as a single fixed mileage tour of duty.

[14] I acknowledge that the Company ceased operations at the Obico Yard in October 2012. This property was also apparently subsequently sold by the Company in 2015. However, these facts were pointed out at the original hearing and I found that the Company could 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 by 3.8 miles. I agree with the Company that the difference in locations is marginal.

[15] I note that the parties did not specify in the Belleville RTA that the exception would no longer apply if Obico Yard ceased operations. The parties also did not address the issue in the October 4, 2012 material change agreement concerning the cessation of operations at Obico.

[16] There is no dispute that the Obico exception applied to intermodal/piggyback service. I see nothing wrong with the Company accessing their intermodal facility at Lambton Yard for a similar purpose.

[17] There is no doubt that circumstances have changed, but the circumstances have not changed materially in my view because the Lambton Yard is closer to the Toronto Yard and the trains at issue relate to intermodal service.

[18] Accordingly, for all the reasons stated above and in my February 7, 2017 award, I find that the Company may apply the Obico exception to trains operating under the Belleville RTA into the Lambton Yard for intermodal service.

[19] I remain seized to address any issues arising from my award and this supplemental award.

Dated at Toronto, Ontario this 31<sup>st</sup> day of August 2017.

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

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John Stout - Arbitrator