



TEAMSTERS CANADA RAIL CONFERENCE

General Committees of Adjustment
Canadian Pacific Railway

Greg Edwards
John Campbell
General Chairmen
Locomotive Engineers

Dave Fulton
Wayne Apsey
General Chairmen
Conductors, Trainmen, Yardmen

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VIA EMAIL

OVER HOURS ARBITRATION:

Sisters and Brothers:

This morning the Union received the awaited results of our hearings before Arbitrator Clarke in regards to the systemic Over Hours violations that go to the core of rail employees' rest and work-life balance.

We will provide a brief summary for you as it is a lengthy award but encourage all to read and provide any questions to your Local Chairperson so they can be forwarded to our offices for clarification.

1) Item 1: If a crew reaches the OMTS before ten hours on duty and yards their train over ten hours on duty are they entitled to the \$80.00 payment?

- "The \$80.00 premium payment is distinct from the 10 Rule. The arbitrator cannot disregard the OMTS reference without rewriting the collective agreement. A rights arbitrator is prohibited from doing that."

2) Item 2: If a crew performs work in the final terminal after arriving at the OMTS prior to ten hours on duty and is subsequently over ten hours, is the crew entitled to the \$80 premium payment?

- "The arbitrator sees no difference in the answer for Items 1 and 2, since in both cases the crew reached the OMTS before being on duty for 10 hours. That does not meet the express requirement the parties included in their collective agreement for payment of the \$80 premium payment."

3) Item 3: Are employees in assigned road service who give notice of rest entitled to the \$80 payment when relieved within the terminal but not in time to be in and off duty within 10 hours?

- "The TCRC satisfied the arbitrator that it negotiated a Local Agreement to govern whether road switcher crews relieved within the Vancouver Terminal would be entitled to an \$80 premium payment. That Local Agreement is distinct from articles 27, 29 and Appendix 9 and has an independent application. Indeed, the Local Agreement expressly notes that the claims fall outside Appendix 9. All Vancouver Terminal employees who meet the Local Agreement's express conditions may be entitled to the \$80 payment.
However, CP alleged that it had cancelled the Local Agreement in 2015 and that it did not form part of the collective agreement (C-11; CP Brief; Paragraph 58). Moreover, CP argued that the parties had never included this scenario in the Items they set out in their JSI (C-11; CP Brief; Paragraph 58). Ultimately, a separate arbitration would be needed to examine the status of that Local Agreement and any employee entitlements."

4) Item 4: Are employees in assigned road service who give notice of rest entitled to the \$80 payment when relieved within the terminal after 10 hours?

- "The arbitrator arrives at the same conclusions. Articles 27 and 29 do not appear to apply to assigned road service. Moreover, the text of those articles and Appendix 9 make the \$80

premium payment conditional on having worked over 10 hours prior to reaching the OMTS or objective terminal. The entitlement to additional rest under Appendix 9 is not subject to this condition for employees to which it applies.

Special arrangements have been negotiated for the Vancouver Terminal which may, exceptionally, provide employees with the \$80.00 premium payment if they meet the specific conditions set out in the Local Agreement.”

5) Item 5: Road Employees, who have given notice of rest within 5 hours, arriving at the final terminal over 10 hours on duty and required to yard their train.

- “CP did not persuade the arbitrator that article 27.14 provided it with a defence in this scenario. The debate under article 27.14 about whether crews were on duty and available to assist only applies if the crew had arrived “at the OMTS or designated point prior to 10 hours”. The TCRC and CP both agreed the crew arrived at the OMTS after 10 hours. Just as the arrival time at the OMTS is crucial in determining the entitlement to the \$80.00 premium payment, so too is it essential when applying article 27.14 as a limited exception to the negotiated 10 Rule.

The parties’ negotiated language does not set out what obligations crews have if they have qualified for the \$80.00 premium payment ie arrived at the OMTS after 10 hours. While the arbitrator agrees with Arbitrator Picher in 4078s that a crew cannot just abandon its train, CP did not negotiate yarding obligations for employees who reach the OMTS after 10 hours.

The arbitrator agrees with the TCRC that CP had an obligation to relieve the crew. The employees’ 5-hour notice provided CP with the time to make those arrangements.”

6) Item 6: If a crew reaches the Outer Main Track Switch (OMTS) before ten hours on duty and yards their train over ten hours, is this a violation of the Collective Agreement?

- “4078 did not address explicitly the situation of a crew arriving at the OMTS before 10 hours and being required to yard their train thereafter. The arbitrator has already enumerated for Item #5 article 27.14’s pre-conditions which apply to this scenario. Those pre-conditions will determine whether CP violated the collective agreement when requiring a crew to yard their train. It appears Arbitrator Picher came to the same conclusion about yarding in a different case: CROA&DR 4180, supra.”

7) Item 7: Road Employees who have not given notice of rest and not been in and off duty within 12 hours.

- “But subject to exceptional situations, employees are entitled to their rest entitlements as negotiated into the collective agreements. Article 27.12 allows employees to work, but only up to 12 hours at which time they must also have completed their tour of duty. This obligation does not have the same types of exceptions, such as for yarding, which applied for employees who provided notice to be in and off duty within 10 hours.”

8) Item 8: Are employees who are transported by the Company to a designated rest facility at the end of a tour of duty on duty until:

- arrival at the Away From Home Terminal when train yarded/relieved of responsibility) or;
- when the employee arrives at the booking in facility, as designated by the company, at the Away From Home Terminal or;
- when the employee arrives at the accommodations provided by the Company or;
- until the employee is tied up at the rest facility

- “As a result, the WRR does not determine what time is “on duty” time for collective agreement purposes, except in cases of statutory maximums. Similarly, reasonable travel time to and from accommodations is not “on duty” time if the tie up has already taken place. But if CP requires

employees to travel first, before tying up, then they only go off duty after completing their tie up.”

9) Item 9: Are employees who are transported from a designated rest facility to the reporting location on duty:

- at the rest facility if the employee receives work documents there or;
- when the employee enters the transportation provided by the Company or;
- when the employee arrives at the reporting location or (sic);

- “The arbitrator is satisfied that the parties’ use of the expression “report for duty” in the 2007 MOS, whether at the home or away-from-home terminal, means that employees go on duty at the terminal for purposes of the 10 Rule.

The arbitrator does not agree that CP employees must always be on duty when being transported. Railway employees differ from employees who return to their home every night after work.”

10) Item 10: Are employees entitled by Collective Agreement provisions to report for duty at their lockers and prepare themselves for a tour of duty or are they obliged to be “dressed and ready” for work at their lockers.

- “The arbitrator is satisfied that any leeway for preparation time at the start of a tour of duty is a matter for negotiations. Otherwise, employees need to be ready for their tour of duty at their reporting time. In section 9 of the 2007 MOS, the parties did not negotiate language which read “report to prepare for duty” or “report to get dressed for duty”. Instead, they agreed employees would “report for duty”.

Absent other language, this persuades the arbitrator that employees need to be ready to perform their duties at their report time. This appears consistent with the findings of other CROA arbitrators: CROA&DR 4178. Employees could not be ready for their duties if they then took 5 minutes or more to prepare themselves.”

REMEDY:

- ” The answers to the 10 Items above demonstrate that the TCRC is entitled to certain remedial relief. However, CP also successfully demonstrated that the TCRC is not entitled to the full scope of its remedial requests (U-6; TCRC Brief; Paragraph 299).

For the reasons set out above, the parties’ negotiated language does not entitle employees to an \$80.00 premium payment whenever they have given proper notice and remain on duty for over 10 hours. That payment is instead conditional on the time employees reach the OMTS or objective terminal. An arbitral award cannot change this negotiated language.

The arbitrator accordingly declares that CP has violated the collective agreement.

The TCRC has further convinced the arbitrator to issue a cease and desist order given the high number of examples, even using CP’s own numbers and explanations, when employees’ right to be off duty within 10 hours has not been respected. This cease and desist order applies as well to those employees who are entitled to be in and off duty within 12 hours.

The TCRC also briefly referred to article 71.04 of the collective agreement and CP’s alleged failure to respond to certain \$80.00 premium payment grievances (U-24; TCRC Brief; Paragraph 77). Since article 71.04 contains potentially significant negative consequences for both the TCRC’s ability to progress a grievance, and to CP’s ability to dispute a wage claim, a hearing on this specific issue would be required if it remains live following the issuing of these reasons.”