IN THE MATTER OF AN ARBITRATION

BETWEEN

CANADIAN NATIONAL RAILWAY COMPANY

(The "Company")

AND

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
SYSTEM COUNCIL NO.11

(The "Union")

RE: Alleged violation by the Company of Articles 6.1, 10.08 c) 12.29 and 12.30 of Collective Agreement 11.1 where ten employees from the St. Lawrence Region were required to attend training at the Winnipeg Training Centre on November 3, 2014, for a ten-day training session.

SOLE ARBITRATOR: Christine Schmidt

Appearing For The Union:

K. Stuebing	– Counsel, Caley Wray
S. Martin	– Senior General Chairman IBEW
L. Couture	– International Representation IBEW
L. Hooper	– General Chairman IBEW

Appearing For The Company:

D. Laurendeau	– Manager Labour Relations
S. Grou	– Senior Manager Labour Relations
J. MacDonald	– Senior Manager S&C
S. Lauzon	– Manager S&C

A hearing in this matter was held in Toronto, Ontario on October 7, 2016

A W A R D

The nature of the dispute is summarized in a Statement of Dispute and Joint Statement of Issue filed by the parties, which reads as follows:

> Dispute:
> Alleged violation by the Company of Articles 6.1, 10.08 c), 12.29 and 12.30 of Collective agreement 11.1 where ten employees from St. Lawrence Region were required to attend training at the CN Winnipeg Manitoba Training Centre on November 3, 2014, for a 10-day training session.
>
> Joint Statement of Issue:
> Commencing on or around November 3, 2014, 10 Champlain district S&C employees were required to report to the Company's Training Centre located in Winnipeg, Manitoba, for a 10 day training session.
>
> The Union contends a violation of Articles 6.1, 10.08 c), 12.29 and 12.30 of Collective agreement 11.1. Additionally, the Union contends that the Company has imposed new training location requirements on employees without completing negotiations allegedly as agreed to during the 2012 negotiations.
>
> The Union seeks a declaration that the Collective agreement has been violated and that the 10 grievors be ordered whole in respect of the following: the daily commute time between the Company provided accommodations and the Winnipeg Training Centre (return), for travelling from their place of residence to Winnipeg and return at the overtime rate of pay, and; to provide opportunity for employees to return to their place of residence on weekends or compensation for their being held away from home. The Union further seeks a declaration that absent the parties' mutual written agreement, the Company cannot force employees to be off region.
>
> The Company disagrees with the Union's contentions and has declined the Union's grievance.

FOR THE COMPANY	FOR THE UNION
Denis Laurendeau Manager Labour Relations	Steve J. Martin Senior General Chairman IBEW SC No.11

This group grievance was brought by the Union on behalf of ten new Company employees, all of whom are from the Champlain district in Quebec. The employees were hired to become S&C Mechanics/Technicians. As part of their apprenticeship to become qualified they are required to undergo a 10-day training session at the National Winnipeg Training Centre in Manitoba ("WTC"), which opened in September 2014 and which is "Off Region" for the employees in question.

The WTC was built to consolidate the Company's various training activities into one central location in Canada. It is equipped with a full training and administrative staff, classrooms and lab facilities, and various types of equipment that facilitate practical hands-on training to both unionized and management employees. In addition, the WTC has a full cafeteria to provide meals to employees who attend training at the facility.

The facts are not substantially in dispute. The nature of the training itself is not new. However, prior to 2009 the training was done locally. Since that time it has either been undertaken locally; and to the extent that it has taken place Off Region it has been given in locations other than Winnipeg. There has never been a mutual written agreement between the parties as contemplated by article 10.8 (c) of the collective agreement in respect of training that has taken place Off Region.

What has changed since the training commenced at the WTC, is that the Company now significantly orchestrates the logistics surrounding it. Whereas before the

employees booked and sought reimbursement for their own transportation and hotel accommodation, now the Company chooses, books and pays for those items itself. In addition, the Company arranges with the designated hotel the provision of meals for employees in the morning and the evening. During training lunch is provided at the WTC. The hotel also provides brunch and dinner for the employees on their rest days at the Company's expense.

The training itself runs between 08:00 hours and 17:00 hours from Monday to Friday, with a one hour lunch period. The eight hours per day that the employees spend in training is paid time, and the parties agree that the training itself is "work." The employees then have two rest days at the designated hotel on the weekend, and they return to complete their training at the WTC on Monday for another five days, after which they then return to their homes.

Beyond the logistics cited above, the Company offers employees a shuttle service to and from their hotel to the training facility daily. The bus ride takes about 35 to 40 minutes one way. Employees are expected to be at the pick up location at their designated hotel 10 minutes prior to the shuttle's scheduled departure for the WTC. By the time all is said and done the shuttling process takes approximately an hour each way. Though the Company says that employees are not "required" to take the shuttle, the Company will not compensate them for reasonable expenses associated with

alternative means of transportation that they may choose instead of the shuttle.[1] If employees choose not to use the shuttle, they must personally bear the cost of their transportation.

The employees at issue were compensated at a pro rata rates to a maximum of 10 hours for the time that it took them to travel from their respective homes to the airport in Montreal, the flight time between Montreal and Winnipeg, and the time to get to their designated hotel from the Winnipeg airport. The same was true for employees' return trip at the completion of the training.

In changing the way the Company administers the training as described above, the Union alleges that the Company is in violation of articles 6.1, 10.08(c), 12.29 and 12.30 of the collective agreement. The Company disagrees.

THE COLLECTIVE AGREEMENT

There are a number of provisions of the collective agreement to be considered when evaluating the parties' respective positions. They are set out below:

Article 6 relates to "Overtime and Calls." Article 6.1 reads as follows:

> 6.1
> Except as otherwise provided, time worked in excess of eight hours,

[1] The Company also initially paid travel time to and from the hotel to the WTC, however, it says it did so inadvertently, and that when it discovered the error, payments were immediately discontinued.

> exclusive of meal period, shall be considered overtime and paid on the actual minute basis at the rate of time and one-half.

Article 10.8 (c) is a sub-clause of article 10.08, which itself is a clause in article 10, which relates to "Promotion, Advertising and Filling Positions." Article 10.08 in particular is about the loaning of employees from one Region to another to perform work. It sets out the conditions and consequences associated with performing work in another Region. Article 10.8 provides:

> 10.8
> …
>
> (a) An employee with his concurrence, may be loaned from one Region to another. While on loan, he will be furnished with copies of bulletins issued on his home Region and may bid on such bulletins. If he fails to return to his home Region within one year, he may, within 30 days, elect to forfeit his seniority in his home Region and be accorded seniority on his new Region corresponding with the date he commenced service on such Region, unless otherwise mutually arranged between the System General Chairman and the proper Officer of the Company. An employee so loaned will, on returning to his former Region, resume duty on the position to which he is regularly assigned.
>
> (b) Employees may be required to perform work of an expected duration of one week or less on a Region adjacent to their seniority territory.
>
> (c) Upon written mutual agreement between the System General Chairman of the Brotherhood and the appropriate S & C Officer, employees may be required to perform work of an expected duration of less than ninety (90) days on a Region adjacent to their seniority territory.
>
> (d) Temporary positions on Maintenance of an expected duration of ninety (90) days or more, but less than one (1) year, involving work on two adjacent Regions may be established. Such positions would be advertised to both seniority territories involved and awarded to the senior qualified applicant from the seniority territory where the preponderance of the work is to be performed. Should there be no applicants from that seniority territory, the positions would then be awarded to the senior qualified applicant from the other seniority territory. Should there be no qualified applicants for the position, a Compulsory Trainee from the seniority territory where the preponderance of the work is to be performed would be promoted to the position in accordance with article 12.8.

Article 12 of the collective agreement is about training. The article was negotiated well before the Company contemplated undertaking all of its training at a national facility in the manner it now provides it. The article is comprehensive. It specifically addresses those expenses to be paid during training and the issue of paid travel time at pro-rata rates to attend. The specific articles read as follows:

> **EXPENSES AND TRAVEL TIME**
>
> 12.28 An employee who is required to take training at a location which is outside of his working area but leaves and returns to his place of residence on a daily basis, will be reimbursed the actual reasonable cost of noonday meal, and will be paid travel time at pro rata rates for all time traveling if no accommodation is provided.
>
> 12.29 An employee who is required to take training away from his working area who is unable to leave and return to his place of residence on a daily basis will be allowed actual reasonable expenses necessarily incurred. Such employee will be paid travel time at pro-rata to a maximum of 10 hours per day for time travelling outside of regular hours of duty, except that travel time will not be allowed between 21:00 and 07:00 hours when sleeping accommodation is available.
>
> 12.30 An employee will be permitted to travel to his place of residence on weekends provided that such employee is available for his first training assignment following the weekend. Such employee will be assisted by the application of the terms of the Weekend Travel Assistance Letter which is currently in effect and as may be reissued from time to time. In addition, such employee will be allowed actual reasonable meal expenses necessarily incurred, however, he will not be eligible for payment of any time spent travelling.

The Weekend Travel Letter referenced in article 12.30 of the collective agreement currently in effect is found at Appendix L. It provides:

> This refers to the travel assistance, which is to be provided to employees represented by your organization for getting to their home location on weekends or rest days. The parties have recognized that such arrangements must be fair and practical, must not be permitted to interfere with the performance of the work and must not place an unreasonable economic burden upon the Company.

They have also recognized the need for suitable restrictions on the frequency of trips and the establishment of minimum and maximum distances.

The parties have concluded that a variety of means must be employed to assist the employees with weekend travel and that the determination of the means to be applied in any given situation must rest with the appropriate Company officers.

Qualification:

In order to qualify for weekend travel assistance an employee must be required to work away from his home location on a regular basis (a minimum of 5 consecutive days prior to the weekend). If such work is on a permanent position, which has an established Headquarters location, there must be an acceptable reason for the employee not relocating his home to the Headquarters location, such as remoteness of the location or limited housing at the location.

Travel Assistance

As mentioned above the means to be used to assist employees with weekend travel will vary and the determination of which will apply in each case will rest with the appropriate Company Officers. The means that may be employed are:

(a) Train service; or

(b) Company vehicles; or

(c) A fixed expense allowance to be determined as follows: An amount equal to the average of the mileage rate for the eastern and western Regions multiplied by 175 miles and rounded to the nearest five cents; or

(d) A mileage allowance which is to be determined separately for the eastern and western Regions. Such allowance will be based on actual bus fares in effect on August 1st of each year on sample bus routes. The sample bus routes to be used are attached as Exhibit A. The fares will be converted into an average mileage rate and rounded to the nearest cent. For example, if a round trip is 104 miles and costs $10.00, the cost per mile is therefore $10.00 ¸ 104 = 9.62 cents. Sample bus fares, once converted, are then averaged to determine the applicable mileage rate; or

(e) Any other means which meets the criteria mentioned in the first paragraph of this letter; or

(f) Any combination of a, b, d, and e above.

The adequacy of train service where it is considered as a means for weekend travel is of course a very relative matter. Waiting time, travelling time, and the alternatives available must all be considered. The basic criteria are that the means used must be fair and practical, must not

interfere with the performance of the work and must not place an unreasonable economic burden upon the Company. Where there is a difference of opinion between an employee and his Supervisor in this regard, the issue will be brought to the attention of the Regional or System General Chairman and the Manager, S&C in order to confer in an effort to resolve the difference.

Where a work location is accessible by road the Company shall be under no obligation to provide assistance when the distance to be travelled is forty miles or less in one direction (eighty miles or less return).

The Company's obligation under this arrangement shall not exceed beyond the limits of the Region on which the employee is working.

For employees who are granted a mileage expense allowance, payment shall be limited to 2,700 miles in any one calendar month. However, under special circumstances, after discussions between the Senior System General Chairman and the Vice-President, Labour Relations at System Headquarters, the latter has the flexibility to increase the maximum.

Administration:

Claims for payment under the terms of this arrangement must be made monthly in accordance with Company instructions.

The provisions contained in this letter are effective 1 January 1989 and all previous Weekend Travel Assistance letters, practices or understandings are hereby cancelled.

The mileage allowance calculation referred to in (d) above will be put into effect on 1 October in each year.

The Positions of the Parties

The Union makes several arguments in its brief. I will address each in turn.

EXPENSES

First, the Union takes the position that the present arrangement, whereby the Company pays for the employees' accommodation at a designated hotel, their meals at the hotel during the training and the expense of shuttling employees to and from their hotel to the WTC is contrary to article 12.29 of the collective agreement.

The violation, in the Union's submission, is clear since article 12.29, which the parties agree is the applicable article states that employees "will be allowed actual reasonable expenses necessarily incurred." The Union emphasizes the use of the word "allowed" and says that the phrase means that if an expense occurs and is a necessary part of training, it should be compensated. The benefit of having expenses paid is, in the Union's view, a "substantive benefit" provided by the collective agreement that cannot be defeated by the Company's change in policy now that the WTC is operational.[2] The Union says article 12.29 does not give the Company the ability to provide an equivalency to reasonably incurred expenses.

The Union submits that it was led to believe that the practice of reimbursing actual reasonable expenses would continue based on representations the Company made at bargaining in 2012. At that time the Union was aware that the Company planned to centralize training at the WTC. In support of its position, the Union directs me to a letter sent to Brian Strong, the then Senior General Chairman dated December 21, 2012, and signed by both Mr. Strong and a Company representative:

> Dear Mr. Strong:
>
> This has reference to our discussions held during the course of contract negotiations with respect the Company's proposal concerning the provisions of paragraph 12.30.
>
> The parties agree, during the closed period, to meet and review the provisions of paragraphs 12.28 to 12.30 concerning Expenses and Travel Time, in relation to the new Training Facility in Winnipeg, MB.

[2] See *Health Employers Assn. of British Columbia v B.C.N.U.* (2002), 107 L.A.C. (4th) 32 (Taylor).

If this represents your understanding, please counter sign below.[3]

In light of the letter reproduced above, and in the alternative to its primary submission on the interpretation of article 12.29, the Union submits that the Company is estopped from implementing the changes that it has made for the life of the collective agreement. The promise to "meet and review the provisions of Article 12.28 to 12.30" the Union understood to mean that the practice of how expenses had previously been paid would be maintained. The Union relied on the Company's representation to its detriment by forgoing the opportunity to make further proposals in bargaining.

In response to the Union's position, the Company argues there is no restriction contained in article 12.29 to prevent the Company from making the arrangements that it has chosen to make. The Company submits that it has exercised its management right to make the arrangements. The Company acknowledges that, in making arrangements to facilitate the required training, it must act reasonably. It has done so, in its view, by removing the responsibility and inconvenience to employees for making certain arrangements thereby alleviating those costs that employees would otherwise necessarily have to incur themselves (and that the Company would have to reimburse). At the same time, by providing accommodation at a designated hotel, providing meals at the hotel or the WTC itself, as well providing the shuttle bus to facilitate the employees' travel to and from the WTC, the Company explains that it is better able to control and contain costs associated with the training.

[3] The parties did meet to review the provisions of paragraphs 12.28 to 12.30 on several occasions. Nothing came of those meetings.

As for the Union's estoppel argument, the Company submits it cannot now be pleaded. The Union raised the issue for the first time at the hearing and there is no reference to it in the JSI.

DECISION RE: EXPENSES

The starting point for the determination of the dispute regarding expenses must be the language of the collective agreement. My task is to ascertain the intent of the parties by the language they have used and give effect to that intent. Here the applicable clause I am to interpret provides that employees who are required to take training at the WTC are to be "allowed actual reasonable expenses necessarily incurred."

The parties' inclusion of the word "necessarily" in the first sentence of article 12.29 is fatal to the Union's position. But for the use of the term "necessarily" the Union's argument of reasonable expenses incurred being "allowed" may have been persuasive. However, the Company is correct in that in the absence of any prohibition in the collective agreement with respect to Company provided amenities offered to employees on training assignments – such as their lodging, meals and manner of transportation to the WTC - it is within the Company's managerial prerogative to provide them. By doing so, the Company has effectively removed any need for employees to incur those expenses. In other words, those expenses are no longer necessarily

incurred by the employees because the Company has provided the services and products at no cost to the employees.[4]

I am satisfied the Union's estoppel argument fails for the following reasons, regardless of whether the Union raised that argument in a timely manner.

The doctrine of promissory estoppel is founded in equity. It precludes a party, in this case allegedly the Company, from relying on its strict contractual rights when it would be inequitable to do so. Among the elements necessary to found an estoppel is a Company representation intended to affect the legal relations between the parties.

In this case, the Company's assurance made in bargaining in 2012 to "meet and review the provisions of paragraphs 12.28 to 12.30" cannot reasonably be construed as an assurance that the practice of how expenses had previously been paid would continue. If that had been the "promise" made to the Union, the letter to Mr. Strong would have reflected just that. It clearly does not. The assurance given was one to meet and review provisions of the collective agreement nothing more. Without any representation intended to affect legal relations, there can be no estoppel.

The Company concedes that in exercising its managerial prerogative to make the arrangements surrounding training it must act reasonably. In my view, it is unreasonable

[4] The Company, as I understand it, continues to pay actual reasonable expenses such as taxis to the airport, meals en route, for which it provides no alternative service or product and which are necessarily incurred to take the required training.

for the Company to require employees staying at a hotel to eat there on their rest days. To dictate how employees spend their personal time, and where they incur a necessary expense on their day off away from home is an unreasonable intrusion on employees' personal time and choices they should be entitled to make. Therefore, in respect of meals on rest days, employees are to be allowed those reasonable expenses.

TRAVEL TIME TO AND FROM HOTEL TO WTC

The Union argues that the time employees spend travelling from their designated hotel to the WTC, and their return to the hotel at the end of the day is compensable because it is "work" as the term is understood having regard to the relevant jurisprudence.[5] Moreover, the Union says this travel time is to be compensated at overtime rates. In the alternative, the Union says that even if the time spent travelling is not "work," article 12.29 dictates that employees are to be paid travel time "at pro-rata to a maximum 10 hours per day for time travelling outside of regular hours of duty,… ."

In support of its position the Union submits that employees are in the Company's service when they are being shuttled to and from the WTC, that the imposition by the Company of this manner of travel to required training reduces their rest time and is in effect additional time spent in the course of employment. The travel at issue arises directly out of the work requirement to attend training at the WTC. The Union also

[5] See *Re Canadian National Railway and Canadian Telecommunications Union* (1978), 17 L.A.C. (2nd) 142 (Adams) and *Re London and District Association for the Mentally Retarded and Ontario Public Service Employees Union*,[1984] O.L.A.A. No.1 (Saltman). The Union also directed me to cases decided in the WSIB context.

directs me to article 5.2 of the collective agreement, which has workdays for employees on regular assignments starting and ending at a “designated point.” That designated point in this case, the Union submits, is the hotel where the shuttle bus picks up and drops off the employees.

The Company, on the other hand, submits that the collective agreement does not provide for compensation for travel time to and from the employees’ designated hotel to the WTC. Article 12.29 specifically addresses when travel time is payable. In the Company’s submission employees are only entitled to travel time between their home and the training location (in this case Winnipeg). The relevant article does not contemplate the daily travel to and from the employees’ designated hotel to the WTC and it is therefore, in the Company’s submission not compensable.

The Company explains that article 12.29 was meant to address situations where employees had to travel long distances to get to a training location and long distances to return home at the end of each day. The last clause of the second sentence of the article (“except that travel time will not be allowed between 21:00 and 07:00 hours when sleeping accommodation is available”), in the Company’s view, supports its interpretation. Since accommodation was made available to employees in this case, no commute “home” was necessary and therefore no claim for travel time arises.

The Company also says that article 12.29 specifically covers situations where employees might be required to travel for extended periods such that accommodation is

provided to avoid the travel to and from employees' homes to the training location. In the Company's view, it is the impracticality of commuting back and forth between an employee's place of residence and the location of the training that determines if travel time is payable. The clause simply does not apply to travel time between the location of the sleeping accommodation and the training location.

The Company also points out that when employees do take training at an area outside their working area but are able to return home daily - the situation covered by article 12.28 - travel time is paid at pro rata rates if no accommodation is provided. The Company argues that had it been the parties' intention to capture the "commuting time" between the hotel and training facilities, it would have been relatively easy to use clear and unequivocal language to that effect. Since that is not the case, the Union's interpretation of the language of the collective agreement, stretches the meaning of the relevant clauses to an absurdity.

In addition, the Company says that the "normal practice over the years" where employees were required to take training in circumstances where it would be impractical to commute daily between home and the training location, and where non-adjacent accommodation to training facilities was provided, employees would not get paid for commuting time between their hotel and the training facilities. In particular, when similar training was given to employees in Toronto, between 2009 and 2014, the Company says the Union did not grieve any violation of the collective agreement. The Union denied this, and ultimately the parties agreed that that the Union had indeed filed a

grievance. That grievance was settled and I am not privy to the terms of settlement. After the settlement, the Union did not pursue other grievances filed on the issue because of the agreement reached and reflected in the correspondence dated December 21, 2012, addressed to Mr. Strong, reproduced above.

Finally, in the Company's submission, to assert the position that the time spent commuting to and from the hotel should be paid at overtime rates is untenable. Had the parties agreed that travelling time was to be considered as actual hours worked and attract payment at the minute basis at time and a half, article 6 of the collective agreement would have set that out. Instead, in this collective agreement the parties have negotiated a very specific provision that deals with travel time for training - clearly applicable and quite separate and apart from the overtime provision. When travel time is compensated for training it is at the pro-rata rates.[6]

DECISION RE: TRAVEL TIME

I have already found that it is within the Company's prerogative to make the arrangements that it has, including the Company's choice to provide a shuttle to transport employees to and from their designated hotel to the WTC. Since the Company provides free transportation, it does not reimburse for any other means of transportation that an employee may wish to take rather than the shuttle. In these circumstances, for

[6] The Company refers me to Ad Hoc 624, Ad Hoc 596 and Ad Hoc -9. None of the factual circumstances in those cases are analogous to those before me, and all engage different provisions of the collective agreement (articles 8.1 of the collective agreement and articles 6.1 and 6.2, which articles have since changed in the first two cases and in the third case the parties to the dispute are not the same nor is the collective agreement language).

all intents and purposes, since employees have to get to the WTC to take required training they have no real option other than to take the shuttle if they wish to avoid having to personally incur the costs of any other mode of transport. Further, the Company requires employees to be at the designated pick up spot for the shuttle 10 minutes prior to its scheduled departure time.

As with the issue of expenses, the dispute about whether the travel time spent on the shuttle and the time employees must present themselves to take the shuttle is compensable must be resolved by reference to the language of the collective agreement.

First, however, I address the Union's claim that the travel time at issue, assuming it is to be paid, must be paid at overtime rates. That position can be addressed summarily. The relevant language, article 12:29, which clearly specifies and the parties agree is applicable to the employees in issue (they are required to take training away form their working area and unable to leave and return to their place of residence on a daily basis) provides they: "will be paid travel time at pro-rata to a maximum of 10 hours per day for time travelling outside regular hours of duty, except that travel time will not be allowed between 21:00 and 07:00 hours when sleeping accommodation is available."

In this collective agreement, the parties have turned their mind to the rate of pay for travel time under both article 12.28 and article 12.29: it is compensable at pro-rata rates. Therefore, quite apart from whether the travel time at issue is "work" as the

meaning of that term has evolved in the jurisprudence, the parties clearly intended that when travel time is compensable in the circumstances prescribed by the language of article 12.29, it is compensable at pro-rata, not overtime rates. Moreover, the reference to “Except as otherwise provided…” in article 6.1 of the collective agreement, dealing with overtime, means that the parties contemplated the application of specific clauses such as 12.28 and 12.29 taking precedence over article 6.1.

I turn to whether article 12.29 provides for the payment of employees, at pro rata rates for the time it takes to travel to and from the WTC from their designated hotel. That travel time was not contemplated in relevant provision, in the Company’s submission. Rather, the relevant article only contemplates employees travel time to and from the “training location” - which the Company takes to mean Winnipeg in this case.

I have no doubt that when this collective agreement provision was negotiated, neither party turned its mind to the situation the Company has now created by orchestrating the required training to take place at a national facility and effectively imposing on employees an additional 35-40 minutes of travelling time each way plus an additional wait time of 10 minutes (with no other compensable means of getting to the training).

Parties cannot anticipate every contingency that might arise with respect to a certain provision. The situation here is one such unanticipated contingency. In such circumstances, arbitrators are called upon to reconstruct a “hypothetical intent” of the

parties based on the parties' language, their behaviour and a sensible resolution to the issue, that was in no party's mind at the time the provision was drafted, but which has now arisen.

While article 12.29 may very well have been crafted by the parties to address situations where employees had to travel long distances to take required training and then long distances to return home at the end of each day as explained by the Company, the second sentence of article 12.29, both parties agree, addresses situations where employees might be required to take training away from their working areas for extended periods of time. That sentence is clear. It states in unequivocal terms that the employees at issue:

> … will be paid travel time at pro-rata to a maximum of 10 hours per day for time travelling outside of regular hours of duty, except that travel time will not be allowed between 21:00 and 07:00 hours when sleeping accommodation is available.

On the plain reading of the sentence reproduced above, employees are to be paid travel time for up to 10 hours **per day** for travelling outside their regular hours of duty (my emphasis). The Company was well aware of the language and its reference to the payment of travel time up to a maximum number of hours per day for travelling outside employees' regular hours of duty. It was well aware of that language when it implemented the shuttle service described above. It was well aware of that language when it remained unchanged during successive rounds of bargaining. The only exception contemplated by the parties to the payment for travelling outside employees' regular hours of duty is that it is not compensable between 21:00 and 07:00 hours when sleeping accommodation is available. The subordinate clause in the relevant sentence

does not preclude travel time when sleeping accommodation is provided to employees; rather it precludes payment of travel time between certain hours when sleeping accommodation is made available. The exception has no application in this case.

Parties, like arbitrators must take the language of the collective agreement as they find it. In this case, by choosing to manage employees' travel from the hotel to the WTC such that it imposes significant travelling time outside employees' regular hours of duty for every day they take training, the Company is unable to escape the application of the language it has negotiated.

Contrary to the Company's submission, the entitlement to travel time in the circumstances at play here is not an "absurd interpretation" when compared with the entitlement to travel time for employees who return home on a daily basis. It is consistent with the treatment of those employees, if one views the designated hotel as analogous to the employees' place of residence in article 12.28.

Further, the "normal practice over the years" referred to by the Company is of limited assistance. As I understand it, the Company initiated the provision of required training for extended periods of time away from home in approximately 2009. At that time the Union filed a grievance on the issue, and it was settled on terms of which I am unaware. Further, I am unfamiliar with the travel time associated with other grievances since filed or the specific circumstances surrounding them (including whether employees were entitled to expenses associated with travelling to the training). What I

do know, is that: employees to whom 12:29 applies are now shuttled to their required training for what amounts to almost 2 hours per day outside their regular hours of duty; the Company will not reimburse employees who choose an alternative to the shuttle; and the travel between the designated hotel and the WTC does not take place between the hours to which the exception provided for in article 12.29 applies.

For these reasons, the not insignificant travel time undertaken by employees at the Company's insistence and at considerable inconvenience to them for the purpose of transporting them from a location over which they have no input or control to another, over which they also have no input or control, to attend required training is compensable at pro rata rates pursuant to article 12:29.

MUTUAL AGREEMENT – Article 10.08 (c)

The Union argues that the Off Region assignment of these 10 employees for training in Winnipeg required the Union's consent. Since the parties agree that the training at issue is "work" and because article 12 must be read in conjunction with article 10.8(c), a mutual agreement, in the Union's submission had to be reached before the Company could assign the employees to the training. Because employees in this case are not permitted to travel to their homes on weekends by virtue of article 12.30 of the collective agreement, the Union says the Company is required to negotiate an Off-Region agreement that would compensate employees for being detained in Winnipeg for the duration of their training.

The Company disagrees. It says that article 10 of the collective agreement entitled “Promotion, Advertising and Filling Positions” and in particular article 10.8 (c) reproduced above does not apply to employees taking training. They were not “performing work” pursuant to article 10.08 (c).[7]

With respect to the Union’s argument that the Company must be compensated for being held away from home or afforded the opportunity to go home, the Company directs me to article 12.30 of the collective agreement as well as the Weekend Travel letter currently in effect and reproduced above. The Company submits that weekend travel assistance does not extend beyond the limits of the Region and that Appendix L and article 12.30 do not apply to employees who take training in a region other than their own.

DECISION RE: MUTUAL AGREEMENT

The Union’s primary position, namely that a written mutual agreement is required for employees to take training Off Region pursuant to article 10.8 (c), cannot be sustained.

I have reproduced the entirety of article 10.8 above, which itself is a sub article of article 10, entitled: “Promotion, Advertising and Filling Positions.” While I do not disagree with the proposition that the collective agreement must be read as whole and

[7] The Company refers me to **Ad Hoc 9** and **Ad Hoc 80.**

that provisions contained in the collective agreement must be interpreted in conjunction with each other, in this collective agreement a careful review of article 10 and in particular article 10.8 leaves no doubt that article 10.8(c) has no application to situations where employees are required to take training as provided for in article 12 of this collective agreement.

Article 12 is a comprehensive article relating to training, and training is not, for the purpose of article 10 subsumed within the meaning of “work to be performed” by employees who may be loaned from one Region to another, or required to perform work for varying lengths of time under the article relating to promotions, advertising and the filling of positions. Moreover, given the comprehensive nature of article 12 and the reference in article 12.28 to the possible requirement to take training at locations that would necessitate extended periods away from home, had the parties intended that a written mutual agreement was required for such training to take place, the parties would have made reference to such a requirement in article 12 itself. Finally, the fact that never before has the Union entered into a mutual written agreement under article 10.08(c) when employees have been required to take training outside their region lends further support to the Company’s position: article 10.08(c) has no application to the circumstances at hand.

Notwithstanding the above, the Company’s position that article 12.30 does not apply to employees who are required to take training away from their working area is incorrect. As the first sentence of article 12.30 makes clear, an employee is permitted to

travel home on weekends if he or she makes him or herself available for the first training assignment following the weekend. However, the Weekend Travel assistance letter, which sets out the terms of assistance to be provided to employees does not cover the employees in this case because that Letter restricts the Company's obligation to provide assistance to the limits of the region on which the employee is working. Even without this specific restriction in Letter L, for the Company to provide travel assistance for an employee to return to Quebec from Winnipeg would be both impractical and would place an unreasonable economic burden on the Company.

SUMMARY

The grievance is allowed, in part.

The Company is entitled to require employees to attend training Off Region at the WTC without a "written mutual agreement" being in place. It can do so because article 10.08 has no application to employees taking training pursuant to article 12. While in attendance at training at the WTC, those reasonable expenses necessarily incurred must be allowed. When the Company provides free transportation services and weekday meals, the employees cannot be said to have necessarily incurred expenses in relation to transportation and meals if they choose other alternatives to those provided by the Company, and therefore the Company need not allow such claims. The Company made no representation in the letter to Mr. Strong reproduced above that it would continue paying actual costs associated with training, and therefore the Union's

estoppel argument fails. Finally, the time spent traveling daily to and from employees' designated hotel to the WTC outside their regular hours of duty is compensable at pro-rata rates. The matter of compensation to specific employees for travel time is remitted back to the parties.

I remain seized regarding any unresolved dispute regarding compensation referred to in the preceding paragraph.

Dated at Toronto this 2 day of November, 2016.

CHRISTINE SCHMIDT
ARBITRATOR