

IN THE MATTER OF A DISPUTE

BETWEEN:

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
SYSTEM COUNCIL NO. 11

(the "Union")

-and-

CANADIAN NATIONAL RAILWAY COMPANY

(the "Company")

Policy Grievance
Re: Article 4.5 and Appendix M

Arbitrator

Richard I. Hornung, Q.C.

For The Union:

Robert Church – Counsel
Steve Martine – Senior General Chairman
Lee Hooper – General Chairman
Gurpal Badesha – Regional Representative

For The Company:

Barinder Kambo – Manager, Labour Relations
Susan Blackmore – Senior Manager, Labour Relations
Francois Daignault – Manager, Labour Relations
Timothy Orr – Assistant Chief Engineer
Michael Wilson – S&C Manager, Alberta
Andrew Kich – S&C Manager, British Columbia

Hearing Date:

May 24, 2019

Hearing Location:

Calgary, Alberta

Decision Date:

July 16, 2019

I

EX PARTE STATEMENTS OF ISSUE:

The essence of this dispute is contained in the following excerpts from the Ex Parte Statement of Issues filed:

The Union initiated a Policy Grievance on behalf of all S&C Technicians in receipt of a Standby Allowance as outlined in Article 4 and Appendix M of Agreement 11.1. Two specific instances of these violations were identified as S&C Technician Taurayi Kapungu #157900 who was denied an additional 4 hours of Standby Allowance pay for additional coverage between February 14th to February 20th, 2016, and S&C Technician Peter Charles #120633 who was denied 8 hours Standby Allowance pay per day for January 16th & 17th and January 30th & 31st, 2016.

The Union claims that the Company failed to make arrangements with the Union for protection of the additional territory and that therefore payment should apply under Appendix M.

The Union contends that the reference in Article 4.5 to “requirements of the service” is intended for unforeseen circumstances requiring immediate action and is based on normal expectations.

The Union requires on a go forward basis that all Technicians be compensated in accordance with the Collective Agreement and more specifically Appendix M. In the alternative and without prejudice to the foregoing, the Union seeks a declaration that our members are not required under the Collective Agreement to cover adjacent territories except under the strict wording of Article 4.5 and Appendix M.

The Company disagrees with the Union’s contentions and denies the Union’s grievance in its entirety.

II

The request for relief in this policy grievance arise out of the Union’s dissatisfaction with the Company’s requirement that S&C Technicians protect calls on both their own territories and on one or more “*adjacent territories*”: (1) without being compensated more than one Standby Payment and (2) for much longer durations than contemplated by the Collective Agreement.

A general understanding of the background of S&C Stand-by work can be gleaned from reading a previous decision by this arbitrator (**AH 656**) dealing with the dismissal and reinstatement of one of the Grievors here. While that award dealt with the application of Article 4.5 relative to the circumstances which arose in the dismissal grievance, the determination therein was not intended to be definitive as regards the specific interpretation/application of Article 4.5. This grievance and award are.

The issues here are as follows:

1. Is the Company required to pay additional Stand-by compensation to S&C Technicians to protect calls on each adjacent territory assigned to that Technician;
2. If not, and in the alternative, the Union requests a declaration that - going forward - the Company is only permitted to utilize *Article 4.5 Standby Allowance Coverage* for a maximum period of a “*few days to a few weeks*”, or such other period as the Arbitrator deems to be a “*short duration*” as clarified under *Appendix M*.

III

The relevant provisions of the Collective Agreement read as follows:

- 4.1** *In view of the intermittent character of the work of certain S & C Coordinators, S & C Technicians, S & C Leading Maintainers, S & C Leading Mechanics, S & C Maintainers, S & C Mechanics, S & C Assistants, S & C Apprentices and S & C Helpers, they will be paid in addition to their regular earnings for time actually worked, a stand-by allowance of 7.5 straight time hours per week at the applicable hourly rate of the job they occupy effective January 1, 2001. The provisions of Articles 4.2 to 4.16 inclusive, will apply to employees referred to in this Article.*
- 4.4** *Employees shall be assigned one call day per week, either Saturday or Sunday, and one rest day per week, either Saturday or Sunday, except that, at those locations where more than one shift is required, such employees shall be assigned one call day per week and one rest day per week which shall be consecutive.*

- 4.5** *On call days and outside of regular hours, employees will protect calls on their own territory. They will be available for calls unless they make suitable arrangements with the S & C Supervisor for the protection of their territory without involving additional expense to the Company and so advise the proper authority. It is the responsibility of the S & C Supervisor to advise the employee, in writing, as to who the “proper authority” is at any given time.*

Note: Notwithstanding the provisions of this Article 4.5, in recognizing that the requirements of the service must be met under circumstances caused by the temporary absence of regular employees, the Company may require employees to protect calls on adjacent territories.

...

- 4.7** *On territories where conditions warrant, other mutually satisfactory arrangements may be agreed upon in writing between the S&C Senior Manager or delegate and General Chairman or delegate for protection of the employee’s territory.*

Appendix M:

The Note to Article 4.5 allows the Company to require employees on stand-by to protect calls on adjacent territories in instances of temporary absence of regular employees. The mechanism provided under the Note to Article 4.5 is not intended to have employees on stand-by protect calls on adjacent territories in instances of extended temporary absences, subtracting the Company from its obligation to fill temporary vacancies in accordance with Article 9 of the Agreement.

For purposes of clarification, it is understood that the temporary absences contemplated by this provision are, in the normal course, of relatively short duration, ranging from a few days to a few weeks and addresses instances where the regular employee cannot protect his or her assignment on account of bereavement leave, sickness, training, etc.”

IV

Arguments and Decision

(i) Additional Standby Payments

Similar to the position taken in **AH 656**, the Union argued that, pursuant to the provisions of *Article 4.5* and *Appendix “M”*, Technicians who are assigned to cover additional territories to their own are entitled to a standby allowance for **each** extra territory. The Union does not dispute that S&C Technicians are required to protect calls on their own territory and that the Company may require them to protect calls on adjacent territories. However, it asserts that where Technicians are required to protect

calls on adjacent territories the Company is required to pay standby allowances for each additional territory.

In **AH 656** I noted as follows:

“During the February 22, 2016, investigation ... the Grievor enunciated his concerns with regard to CN’s position on Standby Allowances.

“Every second weekend, I cover four territories for three days and 15.5 hours. This is outside of the scope the position I bid and too much of an intrusion into home and family life without compensation. The Wainwright technician covers one territory for the same amount of compensation. This is in addition to my closing comments from question #38 of the previous statement from January 21, 2016.”

...S&C employees are also entitled to additional Standby pay when: they are protecting Standby on a general holiday (Article 4.11, 4.12 and 4.13); protecting Standby on additional territories when another employee is on their annual vacation (Appendix “M” - vacation coverage); and, on such other Standby arrangements as might be agreed to (Article 4.7).

*...
The Grievor was of the mind, and took the position at the hearing, that under Article 4.5 and Appendix “M” employees who are assigned to cover additional territories are entitled to Standby allowance for **each** territory...*

*...
The Union’s interpretation of Article 4.5 and Appendix M is that employees who are assigned to cover additional territories to their own are entitled to a Stand-By Allowance for each territory (Union Brief para. 21). It being a payroll issue, the language to support that position must be clear. In my view, it is apparent that the terms of the Collective Agreement, as reflected in the provisions quoted here, do not provide for the kind of Standby charges made by the Grievor in the absence of a specific agreement to the contrary...*

*...
The Grievor’s frustrations and concerns about the seeming unfairness of his having to provide standby coverage for territories outside of his area, without compensation, are perhaps understandable. That issue, however, is a matter to be raised in bargaining or as a separate grievance. However, having regard to the language in the Collective Agreement, he was clearly not entitled to collect the standby pay without the agreement of the Employer. Having been unable to achieve a resolution of his concerns, either through his discussions with his Supervisors or at the Rainbow Room meeting, it was incumbent on the Grievor to file a grievance in order to advance his claim. That was his appropriate recourse.”*

My conclusion has not changed. The “Note” in Article 4.5 makes it apparent that “... the Company may require employees to protect calls on “adjacent territories” (plural). No mention is made of extra compensation where more than one adjacent territory is protected. Nor, could I find, in the language of the Collective Agreement, an obligation

by the Company to pay standby for each additional adjacent territory. As stated in **AH 656**, it being a payroll issue, the language to support the Union's claim for extra compensation must be clear. It is not.

In the circumstances – absent an agreement pursuant to Article 4.7 – the Company is not required to compensate S&C Technicians for standby allowance for each adjacent territory which they protect while on call. The grievance in that respect is dismissed.

(ii) Duration of Standby protection

While the Union does not take issue with the temporary adjacent territory coverage, that falls within the definition of temporary absences as contained in Appendix "M", it asserts that the temporary coverage must be of short duration ranging from, as Appendix "M" states:

"... a few days to a few weeks and address instances where the regular employee cannot protect his or her assignment on account of bereavement leave, sickness, training etc."

It states that S&C technicians have been required to do on call standby for more than one adjacent territory that has far exceeded the time periods prescribed by Appendix "M" and therefore requests a declaration that:

"Going forward the Company is only permitted to utilize Article 4.5 standby allowance coverage for a maximum period of a few days to a few weeks, or such other period as the Arbitrator deems to be a short duration under Appendix "M".

The "Note" in Article 4.5 provides that, notwithstanding the provisions of Article 4.5, the requirements of service must be met *"under circumstances caused by the **temporary absence** of regular employee, (and) the Company may require employees to protect calls on adjacent territories"*.

In order to clarify the meaning of that Note, Appendix "M" reiterates that it allows the Company to require employees on standby to protect calls on adjacent territories in instances of **temporary absence** of regular employees. It then goes on to state that the standby process provided in the Note is not intended to have employees on standby protect calls in adjacent territories in instances of **extended temporary absences**,

which might subtract from the Company's obligation to fill temporary vacancies in accordance with the Collective Agreement.

Finally, for further clarification, Appendix M provides that:

*For purposes of clarification, it is understood that the temporary absences contemplated by this provision are, **in the normal course, of relatively short duration**, ranging from **a few days to a few weeks** and addresses instances where the regular employee cannot protect his or her assignment on account of bereavement leave, sickness, training, etc."*

Thereafter, Article 4.7 provides:

On territories where conditions warrant, other mutually satisfactory arrangements may be agreed upon in writing between the S&C Senior Manager or delegate and General Chairman or delegate for protection of the employee's territory.

The abbreviation "etc." at the conclusion in the final paragraph of Appendix "M" at best reflects that the parties contemplated that circumstances - similar to bereavement leave, sickness and training and "so forth" – might arise which would lead to temporary absences, in the normal course, ranging from a few days to a few weeks.

The Union points out that the examples provided in Appendix "M" are representative of short-term absences and that the specific examples which the parties chose are those where a technician would only be expected to provide standby coverage for a limited duration. It points out that under the provisions of the Collective Agreement, "bereavement leave" (Article 20) can be between 3 and 5 days. "Sickness" is also regarded as an absence of a relatively short duration which, in context, is meant to focus on unexpected, short-term illness and not extended periods of illness for which longer term disability benefits are available. Finally, the "training" aspect mentioned in Appendix "M" (at the time it was prepared) refers to the kind of short term at 2-3 day training courses which S&C employees are required to attend from time to time. The Company does not take issue with these assertions but argues that the examples were not intended to be exhaustive (as the abbreviation "etc." implies).

That said, it is fair to conclude (which I do) that the examples provided are representative of short-term absences; and, that the specific instances the parties chose are such where a technician would only be expected to provide standby coverage for a limited duration.

The fundamental precepts of collective agreement interpretation are to give words their plain and ordinary meaning (unless a different meaning is clearly intended); and, to interpret the agreement as a whole in a manner that preserves its spirit and intent.

As discussed in *Gourmet Baker Inc. v. United Food and Commercial Workers Union, Local 832*, [2004] M.G.A.D. No. 49:

"124. ... the fundamental object in construing a term of a collective agreement is to discover the intention of the contracting parties. As noted in Brown and Beatty, supra:

"It has often been stated that the fundamental object in construing the terms of a collective agreement is to discover the intention of the parties who agreed to it. As one arbitrator, quoting from Halsbury's Laws of England, stated in an early award:

"The object of all interpretation of a written instrument is to discover the intention of the author, the written declaration of whose mind it is always considered to be. Consequently, the construction must be as near to the minds and apparent intention of the parties as is possible, and as the law will permit:" (para. 4-2100)

125. The parties are presumed to have intended what is stated in the collective agreement, so the meaning can be found in their express words; that is:

"Accordingly, in determining the intention of the parties, the cardinal presumption is that the parties are assumed to have intended what they have said, and that the meaning of the collective agreement is to be sought in its express provisions:" (Canadian Labour Arbitration, supra, para. 4-2100)

(See also: *Ontario Power Generation and Society of Energy Professionals [2001] CarswellOnt 16471*).

Although the examples raised in Appendix M, are not exhaustive, they are nevertheless illustrative. Furthermore, they are consistent with the phrases of: *"temporary absence"*, *"relatively short duration"* and *"a few days to a few weeks"* and serve to inform the Company's intent not to use standby *"in instances of extended temporary absences"*.

Reading the provisions of Article 4.5, 4.7 and Appendix M as a whole, it is apparent that standby coverage on adjacent territories was intended to address the temporary absences of its regular employee of a limited duration which, in any event, falls within the duration of “*a few days or a few weeks*”. Purpose and meaning are to be given to the words used by the parties. The choice of the phrase: “*a few days or a few weeks*” means that the parties intended the standby obligations to apply on adjacent territories where the regular employee will be absent from that territory for a period of a few days to a period of under a month. These are sophisticated parties with a long history of negotiations. It can be fairly presumed that they would not use words in the Collective Agreement that are without meaning or significance. Had the parties intended that the standby provisions would apply for a period of a month or longer they would not have used the phrase: “*a few days to a few weeks*” in Appendix M when clarifying the provisions of Article 4.5. It therefore stands to practical reason that the standby provisions, referred to in Article 4.5 and Appendix M, were intended to apply for a period of less than a month.

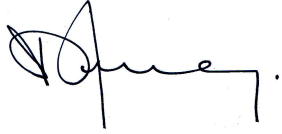
In circumstances of longer duration “*where conditions warrant it*”, Article 4.7 specifically makes provision for the parties to arrive at “*mutually satisfactory arrangements*” to accommodate the extended time frames.

V

Accordingly, having regard to the provisions of Article 4.5 and Appendix M, it is declared that S&C Technicians may only be called on standby to protect calls on adjacent territories where the temporary absence of a regular employee from that territory will not exceed a period of less than one month. Failing which, the parties must negotiate mutually satisfactory arrangements pursuant to Article 4.7.

The grievance is allowed in part. I shall retain jurisdiction with respect to the application, implementation and interpretation of this award.

Dated at the City of Calgary this 16th day of July 2019.

A handwritten signature in black ink, appearing to read "R. Hornung". The signature is written in a cursive style with a prominent initial "R" and a long horizontal stroke extending to the right.

Richard I. Hornung, Q.C.
Arbitrator