IN THE MATTER OF AN ARBITRATION

BETWEEN: CANADIAN PACIFIC RAILWAY COMPANY

AND TEAMSTERS CANADA RAIL CONFERENCE

AND IN THE MATTER OF A GRIEVANCE RELATING TO THE ESTABLISHMENT OF A GRIEVANCE MANAGEMENT SYSTEM

ABRITRATOR: J.F.W. Weatherill

Hearings in this matter were held at Toronto on September 5 and 6, 2019.

D. Ellickson, for the union.

I. Campbell, for the employer.

AWARD

The arbitrator's jurisdiction in this matter arises in a general way from the collective agreement and in particular from the agreement of the parties made in the course of proceedings before the Canada Industrial Relations Board. The proceedings before the Board were instituted by the union with respect to the company's implementation of a new Grievance Management System. The union's complaints included the allegation that implementation of the GMS would represent a breach of what is now Article 40 of the Consolidated Collective Agreement between the parties, as well as allegations of various breaches of the Canada Labour Code.

The parties' agreement to refer the matter to arbitration includes the following:

> *To confirm, the parties have agreed that Arbitrator Weatherill will have the ability to hear evidence on and decide the question of whether CP's implementation of the GMS results in a breach of the collective agreement and/or the Canada Labour Code and, if so, to issue a declaration confirming same or such other relief as he may deem appropriate in his role as arbitrator appointed under CROA rules.*

At the hearing of this matter, the company submitted that there were three issues before me, as follows:

1. Does the company's implementation of the GMS, which will require the union to submit its grievances electronically through a centralized database, represent a violation of Article 40 of the collective Agreement?

2. Has, through the implementation of the GMS, the company engaged in a breach of either s. 94(1) or 94(3)(b) of the Code?

3. Will the introduction of the GMS result in a breach of any of s. 36(1), 50(a)(1), 56 or 57(1) of the Code?

The parties agreed that question (1) should be dealt with first, as the determination of that issue might render consideration of the other questions moot. In the event that it should be necessary to determine those other issues the parties retained their rights to present evidence and argument with respect to them.

I turn now to the question of whether or not the implementation of the GMS would involve a violation of Article 40 of the collective agreement. The material portions of that article are as follows:

WAGE CLAIMS AND/OR ALLEGED VIOLATIONS OF THE COLLECTIVE AGREEMENT

40.01 A wage claim not allowed will be promptly returned and the employee advised the reason therefore. If not returned to the employee within thirty calendar days the claim will be paid.

When a portion of a claim is not allowed the employee will be promptly notified and the reason given, the undisputed portion to be paid on the current payroll.

40.02 A grievance concerning the meaning or alleged violation of any one or more of the provisions of this Collective Agreement shall be processed in the following manner:

Step 1 – Presentation of Grievance to the designated Supervisor

Within 60 calendar days from the date of the cause of grievance the employee may present the grievance in writing to the designated Company Officer who will give a decision in writing as soon as possible but in any case within 60 calendar days of date of the appeal, or this Step may be bypassed by forwarding the grievance to the Local Chairman who may initiate the grievance at Step 2.

Step 2 – Appeal to the Designated Company Officer

If a grievance has been handled at Step 1, within 60 calendar days from the date decision was rendered under Step 1 the Local Chairman may appeal the decision in writing to the designated Company Officer.

If Step 1 has been bypassed then, within 60 calendar days of the date of the cause of grievance, the Local Chairman may present the grievance in writing to the designated Company Officer who will give a decision in writing as soon as possible but in any case within 60 calendar days of the date of the appeal.

The appeal shall include a written statement of the grievance along with an identification of the specific provision or provisions of the Collective Agreement which are alleged to have been misinterpreted or violated.

Other provisions of Article 40 include particular provisions with respect to discipline cases (Step 1 – Appeal to the Designated Company Officer; Step 2 – Appeal to General Manager) and with respect to submission to arbitration. There are essentially three requirements to be met in filing a grievance: 1) that it be in writing; 2) that it be filed within sixty days and 3) that it be submitted to a designated company officer (in some cases, to a General Manager).

Following lengthy study and with certain consultations with this and other unions, the company has developed a Grievance Management System involving the electronic filing and tracking of all grievances. During the course of bargaining for the current collective agreement the company made a proposal with respect to amendment to the collective agreement between these parties to accommodate such a system, but the union indicated it was not interested and the matter was dropped. No changes were made to the collective agreement in this regard. On April 5, 2019, the company wrote the union advising that, effective April 15, 2019, "all grievances must be submitted to the Company via GMS as outlined in the November 22nd, 2018 letter attached hereto. Grievances submitted by any other means will not be accepted". That unilaterally-imposed requirement constitutes, it is alleged, a violation of Article 40 of the collective agreement.

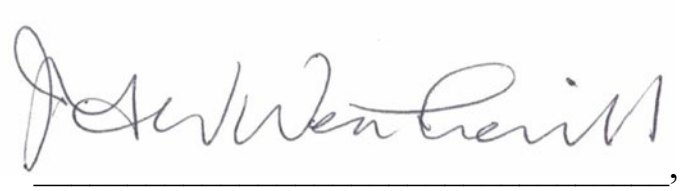
The Grievance Management System was developed by the company for what I consider to be legitimate business reasons. The company and its affiliates are parties to collective agreements involving many bargaining units, each of which includes a grievance procedure. The company argues that it has received many complaints to the effect that it is not processing or responding to grievances in a timely or efficient manner and that there have been undue delays resulting in a backlog of unresolved grievances. The company, it is argued, has recognized a need to modernize the manner in which it receives, processes and tracks grievances as part of a company-wide initiative to modernize its administrative and financial reporting systems.

At present it appears that each party maintains its own grievance tracking system. It may be that there would be advantages to both parties if there were a single system responsive to the needs of both parties. That, however, is not the question. The company argues that its imposition of the GMS and its requirement that all grievances be filed electronically in that system is merely a technological change, a change in the designation, as it were, of the "designated company officer" to receive grievances. It referred, for example, to *C.N.R. and U.T.U, (1990), CROA 2024*, where it was held that payment of wages by mandatory direct deposit did not violate the collective agreement. I am, with respect, in agreement with that decision. In that case the collective agreement did not deal with method of payment of wages, and the change to direct deposit was held not to be a "material change in working conditions". In other examples, the company referred to cases of a software system for reporting work-related incidents, an electronic key-swipe system to track employees' hours of work and a biometric scan system. Grievances in those cases were dismissed, generally for reasons similar to those given in *CROA 2024.*

The instant case is clearly different, in that the grievance procedure, and the filing of grievances, is expressly provided for in the collective agreement. The requirement that all grievances be submitted by way of entry in the GMS is more than a "change of address"; it requires the union to become involved in an electronic program which belongs to and is controlled by the employer. The GMS is not a joint union-management program; it is not the property equally of the company and the union, as is the collective agreement. Thus, the company's letter of April5, 2019 improperly limits the rights of the union and of employees to file grievances and constitutes, I find, a violation of the collective agreement.

The appropriate relief in my view, is to declare as follows: that the company's implementation of the GMS as described above results in a breach of the collective agreement.

DATED AT OTTAWA, this 25th day of September 2019,



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Arbitrator