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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

Written submissions in this matter were received on November 7, 2019 (union request); November 13, 2019 (company reply) and November 14, 2019 (union response).

D. Ellickson, for the union.

I. Campbell, for the employer.

SUPPLEMENTARY AWARD

The award in this matter, dated September 25, 2019, found that the company's letter of April 5, 2019, implementing its Grievance Management System, constituted a violation of the collective agreement.

The relied granted was as follows:

> *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.*

On November 7, 2019, the union wrote the arbitrator, alleging that the company was in violation of the award, in that it was only responding to grievances through its Grievance Management System.

In its reply, the company denies any breach of the award which, it notes, "focused on the manner in which grievances were or could be filed". It would not be accurate to say, however, that the award dealt simply with the filing of grievances. It dealt with the imposition of the Grievance Management System generally.

It is the company's position that the award has been issued, that it cannot be relitigated (with which, of course, I agree), and that I am *functus officio*.

As noted in the award, 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?

It was agreed that question (1) should be dealt with first, and the analysis and determination of that question forms the substance of the award. It was noted that "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". The union now seeks to proceed in respect of such rights, which were not determined by the award.

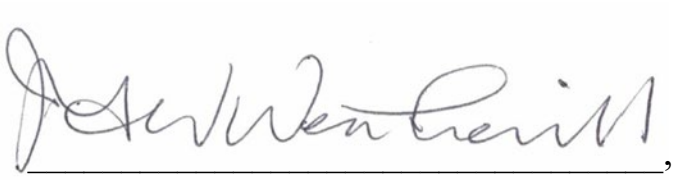
Further, the parties' agreement, in settlement of proceedings before the Canada Industrial Relation Board, conferred on me jurisdiction over the question whether the company's "implementation" of the GMS "results in a breach of the collective agreement", as was found, "and/or the Canada Labour Code", a question which, as noted above, remained open.

In the course of preparing this supplementary award, I have read the decision of arbitrator Sims in the *Wygerhauser* case, 2008 CanLll88124, although I do not rely on it for this supplementary award, which is made for the reasons above set out. The case provides a detailed analysis of what would appear to be the current state of the law of *functus officio* as it applies to labour arbitration in Canada.

I do not have jurisdiction with respect to the "enforcement" of an award, but I do have jurisdiction to deal with outstanding issues properly before me, and to complete the award. The issues noted above are properly before me and have not yet been the subject of evidence or argument, or of an award. It is my conclusion that I am not *functus* in this matter, and that the union's request to proceed must be granted.

Subject to any other arrangements the parties may agree to, the matter will be scheduled for hearing in Toronto.

DATED AT OTTAWA, this 21st day of November 2019,



Arbitrator.