

IN THE MATTER OF AN ARBITRATION

BETWEEN

CANADIAN PACIFIC RAILWAY

(the "Company")

AND

TEAMSTERS CANADA RAIL CONFERENCE

Train and Engine Division

(the "Union")

RE: Annual Vacation and Earned Days Off (Henri Morin)

ARBITRATOR: John M. Moreau QC

Appearing for The Union:

Denis Ellickson	- Counsel, Caley Wray
Dave Fulton	- General Chairman-Conductors, Trainmen and Yardmen, West
Wayne Apsey	- General Chairman-Conductors, Trainmen and Yardmen, East
John Campbell	- General Chairman-Locomotive Engineers, East
Greg Edwards	- General Chairman-Locomotive Engineers, West

Appearing for The Company:

Sharney Oliver	-Manager, Labour Relations, Calgary
Dave Guerin	-Senior Director, Labour Relations, Calgary
Dave Pezzaniti	-Director, Labour Relations, Calgary

A virtual hearing was held on June 18, 2020

EX PARTE STATEMENT OF THE UNION

Disputes:

The forcing of Locomotive Engineers from the Quebec Seniority District to work on the Ontario Seniority District and vice versa in Smiths Falls, Ontario, and by consequence, the resulting establishment of preponderance and allotment of annual vacation and EDO's in Smiths Falls Terminal.

Ex Parte Statement of Issue:

On various dates in 2019, the Company forced Locomotive Engineers from the Quebec Seniority District to fill vacancies on the Ontario Seniority District or from the Ontario District to the Quebec District due to a shortage of Locomotive Engineers within Smiths Falls terminal.

The Company, during the EDO and annual vacation bid, placed Locomotive Engineer H. Morin on the Winchester Pool Locomotive Engineers list for annual vacation and EDO bid citing his lack of prior rights in Smiths Falls defaulted his standing to the Winchester pool. Locomotive Engineer Morin established his preponderance as a Locomotive Engineer by working as a Locomotive Engineer in the Belleville Run-through pool. He had never operated a locomotive on the Winchester subdivision and in fact, is only qualified as a Locomotive Engineer on the Belleville West pool (Run-through) on the Ontario Seniority District.

Given that an Arbitrator is unable to give back time lost, and the likelihood of having this matter progress through the grievance process up to and including arbitration prior to the 2021 bidding deadline, it was agreed between the parties that this matter be arbitrated prior to June 30, 2020 without the formal grievance process being followed.

Union Position: Smiths Falls terminal is unique in that it is the only CP terminal in Canada where two seniority districts meet in the terminal. Equally, the two Districts only apply to Locomotive Engineers.

The Union contends the Company does not have the ability to force a Locomotive Engineer off their district and the Company's actions in doing so are contrary to the parties' practice and various provisions of the Collective Agreement.

The Union further contends that if preponderance as a Locomotive Engineer is established on a specific district, annual vacation and EDO's ought to apply to that district as well.

Company Position:

The Company relies on Article 11-Directional pools as giving it the right to use Locomotive Engineers anywhere within the terminal.

The Company further contends that District boundaries are only applicable to prior rights employees. Having no prior rights in Smiths Falls terminal, Mr. Morin can be assigned to a pool or list of the Company's choosing.

FOR THE UNION:

John Campbell
General Chairperson
LE East
April 24, 2020

EX PARTE STATEMENT OF THE COMPANY

Dispute:

The preponderance and allotment of Annual Vacation and Earned Days Off (EDO) for Locomotive Engineers in the Smiths Falls Terminal—specifically as it applies to Mr. Henri Morin.

Statement of Issue:

Prior to Annual Vacation being awarded for 2020, the Union raised objections to the bidding process as it applied to Locomotive Engineer H. Morin.

The Union contended that Mr. Morin should be able to bid his Annual Vacation and EDOs in the Southern Ontario District (Belleville.) The Company position is that his bid would apply to the Smiths Falls terminal list.

The Company and the Union reached an agreement for Mr. Morin's 2020 Annual Vacation on a without precedent and prejudice basis. The parties agreed that the matter could not be progressed through the grievance process—up to and including arbitration—prior to the 2021 bidding deadline and the issue is now before the Arbitrator.

Company Position:

Preliminary Objection

The Company intends to raise a Preliminary Objection on the basis that the Union's Ex Parte Statement of Issue is well outside of the scope of what was agreed to be discussed within the context of this Arbitration. Notwithstanding the Company's position that any reference to forcing an employee off seniority district is out of scope, the Company also considers the Union's contentions to be untimely.

Additionally, the Union's Ex Parte Statement of Issue provides neither a remedy to be decided upon, nor any allegations of specific Collective Agreement Articles, which the Company is allegedly in violation of. The Memorandum of Agreement Establishing the CROA and DR clearly states:

No dispute of the nature set forth in section (A) of clause 6 may be referred to arbitration until it has first been processed through the last step of the grievance procedure provided for in the applicable collective agreement.

Should the Union now request a remedy or suggest the Company is in violation of the Consolidated Collective Agreement, the Company will appropriately object to the expansion.

Notwithstanding the aforementioned, the Company disagrees and denies the Union's position.

To begin with, the Company cannot agree with the Union provided "Company Position" as evidenced by the fact that we are filing our own Ex Parte Statement of Issue.

The Company maintains that the Collective Agreement distinguishes between bidding for Annual Vacation as a Locomotive Engineer or as a Conductor. There is no Article or language, which supports the Union's contention that "that if preponderance as a Locomotive Engineer is established on a specific district, annual vacation and EDO's ought to apply to that district as well."

It is the Company's position that only eight (8) employees claim "prior rights" on the Smiths Falls Belleville Engineer's Annual Vacation list—Mr. Morin is not one of them. With the exception of these eight employees, the Smiths Falls' terminal list is applicable to all other Locomotive Engineers.

The Company maintains the Union has failed to provide any further support for their claim from either the Collective Agreement or historical documentation.

The Company asks that the Arbitrator find that the Company is appropriately allotting Annual Vacation and Earned Days Off for Mr. Henri Morin of Smiths Falls, Ontario.

FOR THE COMPANY:

Sharney Oliver
Manager Labour Relations
CP Rail
May 21, 2020

AWARD

INTRODUCTION:

This is a dispute regarding the preponderance and allotment of Annual Vacation (AV) and Earned Days Off (EDO) to Locomotive Engineer Henri Morin who works out of the Smith Falls terminal.

In 2019, when it came time to bid for his AV and EDO, Mr. Morin was placed on the Winchester Pool Locomotive Engineers list in the Quebec district. The Union argues that Mr. Morin's established preponderance, according to article 29.21 of the collective agreement, was in the Belleville Run-through pool¹ and he should have been able to bid his AV and EDO on the Southern Ontario Seniority District. The Company's action of placing him in the Winchester Pool² Locomotive Engineer's terminal, in the Union's view, amounts to unilaterally forcing a Locomotive Engineer off their seniority district, in this case the Southern Ontario Seniority District.

The Company's position is that Mr. Morin does not hold prior rights on the Southern Ontario Seniority District. Those with prior rights on the Southern Ontario Seniority District

¹ The Smith Falls Belleville pool operates from Smith Falls to Toronto. Mr. Morin was assigned to the Belleville Pool which meant he would operate from Smith Falls to Toronto and back.

² The Winchester pool operates from Smith Falls to Montreal. Locomotive Engineers on the Quebec Seniority District have jurisdiction over this work.

include only the five listed Locomotive Engineers (“Smith Falls Belleville Engineers”) and Mr. Morin is not listed as one of those five Employees.

COMPANY’S PRELIMINARY OBJECTION

The Company notes that Item 9 of the Memorandum of Agreement establishing CROA and DR states as follows:

No dispute of the nature set forth in section (A) of clause 6 may be referred to arbitration until it has first been processed through the last step of the grievance procedure provided for in the applicable collective agreement.

This dispute did not originate with the filing of a grievance.

The parties have not had the benefit of going through the grievance procedure to clarify the issue in dispute. Nevertheless, the parties have asked the arbitrator to resolve their dispute under the CROA and DR rules. After careful review of the evidence, I find that the agreed issue to be resolved by way of arbitration is found in the email sent from the Company’s Scott Shaw to the Union’s John Campbell on December 15, 2019. It reads as follows:

John,

Further to our discussions on Henri Morin, LE, the following captures our understanding:

1. Without prejudice and precedent to this matter, or any similar or identical matter, Morin will bid AV and EDO’s as part of the Belleville S/D for 2020;
2. The resulting administrative delay with respect to AV and EDO bidding at the effected terminals will not exceed seven (7) days;
3. The parties will take the interpretation issue to arbitration, to be heard by a current CROA arbitrator under CROA rules, no later than June 30, 2020 with an award to be issued within 30 days of the conclusion of the hearing;
4. Nothing will preclude the parties from resolving any outstanding issue(s) beforehand.

If this meets with your approval, please offer your concurrence by responding to this email.

Mr. Campbell indicated his concurrence in an email reply that same day:

Scott,

I concur with this understanding.

Regards,

John

I agree with the Company's view that there is no mention in the Agreement of December 15, 2019 of "forcing employees off seniority districts". This dispute is focussed on the issues surrounding Mr. Morin's preponderance and his entitlement to AV and EDO. Any further issues with respect to "forcing employees off seniority districts", as alleged by the Union, falls outside the four corners of the parties' Agreement. I am reinforced in my view that this dispute only has to do with whether Mr. Morin is entitled to AV and EDO from an email sent by Mr. Shaw on January 2, 2020 where he documents the discussion involving Mr. Morin, including the fact that the Company viewed the Smith Falls terminal as a single district.

Tab 9, # 3. Thursday Call January 2 Update

3) JC* advises account Smith Falls has two (LE) seniority districts that the company cannot call (LE) off district to work on the other district (Winchester LE to work Belleville or vice versa), JC awaits company position on this aspect JC also as per number 6 above has a Belleville LE shown with Winchester LE AV preponderance. JC waiting response from Dave Guerin as Dave stated it is all one district now—

*John Campbell

Accordingly, the Company's preliminary objection with respect to the issue of forcing Locomotive Engineers off a seniority district is upheld as it falls outside the scope of the agreed issue to be resolved involving Mr. Morin's rights on the Belleville West Pool in the Southern Ontario Seniority District

BACKGROUND

As noted in the Union's *Ex Parte* statement, the Smith Falls terminal is the only CP terminal in Canada where two seniority districts meet in the terminal itself: the Smith Falls terminal adjoins the boundaries between the Southern Ontario Seniority District and the Quebec Seniority District. These two adjoining seniority districts in the Smith Falls terminal only apply to Locomotive Engineers.

In December of each year, in preparation for the following's years vacation period, employees in each terminal are notified by informational bulletin that they may begin their annual vacation selection for the following year. Prior to the release of the bulletin, a list indicating preponderance of service is provided by the Company to the Union.

Mr. Morin's Company seniority date is February 28, 1982. He has a "national" seniority date of August 1, 1983, which reflects his seniority date on his District Seniority list as at July 14, 1995. Mr. Morin holds a District Seniority date on the Algoma seniority district, one of the three in Eastern Canada³.

³ The other two seniority districts in Eastern Canada are Southern Ontario and Quebec.

Those Union members who hold a District Seniority date like Mr. Morin are often referred to as holding “prior rights”⁴. In order to hold and exercise “prior rights” on a District, a Locomotive Engineer must have been hired before July 12, 1995. Article 56.01(4)⁵ states in that regard:

56.01(4). Employees placed on a Locomotive Engineer’s Seniority District List, shall have prior rights to all Locomotive Engineers work on their seniority district and shall be trained in seniority order. Prior rights shall be recognized for all seniority districts: British Columbia, Alberta, Saskatchewan, Manitoba/Lakehead, Algoma, Southern Ontario and Quebec with a date of July 12, 1995.

Locomotive Engineers, like Mr. Morin, who hold a District seniority date of July 14, 2015 also have a “Regional Seniority” date of July 13, 1995, which indicates the date the individual was established in a region of eastern or western Canada.⁶

In accordance with article 29.21 of the collective agreement, Mr. Morin had “*performed a preponderance of work in the preceding year*” as a Locomotive Engineer in the Southern Ontario Seniority District:

29.21 An employee who has become entitled to a vacation with pay shall be granted such vacation within the 12-month period immediately following the completion of the calendar year of employment in respect of which the employee became entitled to the vacation. Trainpersons/Yardpersons who are qualified Locomotive Engineers but not working full time as such, at the time vacations are allotted, will have their Annual Vacation scheduled on the basis of their seniority in the class of service in which they performed a preponderance of work (determined by positions held on weekly crew changes) in the preceding year. To clarify, employees who are set-up 27-weeks or more as a Locomotive Engineer will bid their Annual Vacation as Locomotive Engineers, anything less than 27 weeks they will bid in accordance with CTY rules.

⁴ Mr. Morin, as noted, only holds “prior rights” on the Algoma Seniority District. When he performs work on any other District in eastern Canada where he does not hold “prior rights”, his seniority defaults to the Eastern Regional Seniority List.

⁵ Article 56 is the Seniority provision for Locomotive Engineers under the consolidated collective agreement.

⁶ See: Article 56.01(5)(a).

SUBMISSIONS OF THE UNION

The Union underlined that entitlement to AV, EDO and work assignments are determined by seniority within the terminal and district in which an employee is employed as follows: 1) Prior rights (District Seniority); (2) Regional Seniority; and (3) National seniority.

The Union argues that the effect of assigning Mr. Morin to the Winchester Pool in the Quebec Seniority District impacted not only his seniority rights but those of other Union members in the Quebec Seniority District. Mr. Morin was assigned, as noted, to the Belleville Pool on the Southern Ontario Seniority District where he had performed a preponderance of work in the preceding year as a Locomotive Engineer. By unilaterally placing Mr. Morin into the Quebec Seniority District, the Union submits that Mr. Morin was able to improve his relative seniority to the detriment of the Quebec Seniority District Locomotive Engineers. The effect on Locomotive Engineers in the Quebec Seniority District of such unilateral action would be to lose their seniority ranking and benefits, which includes AV and EDO. Overall, from the Union's perspective, the effect of the Company forcing an employee like Mr. Morin from one district to another undermines the seniority provisions in the collective agreement.

The Union submits that there is no dispute that the article 29.21 lists are prepared for vacation purposes by the Company on an annual basis that reflects an employee's preponderance either as a Locomotive Engineer or a Conductor. The Company, however,

fails to recognize that in every terminal in the country, except Smith Falls, there is only one seniority district. Smith Falls is the only terminal where there are two seniority districts for Locomotive Engineers. Although Mr. Morin does not have prior rights in the Southern Ontario Seniority District, he has been consistently assigned over the years to the Belleville Pool District in the Southern Ontario Seniority District.

The Union maintains that the parties' practice has always been that if a Locomotive Engineer has established a preponderance of work at a specific district, entitlement to AV and EDO and work assignments are determined by seniority on that district. The Union notes in that regard⁷ that "*...prior to November, 2019, vacation and selection has always been done by District with separate vacation lists for each [i.e. one list for Winchester (Quebec District); one list for Belleville (Ontario) Locomotive Engineers; and one list for conductors]*".

In support, the Union points to the 2017 Annual Vacation Entitlement list which shows that vacation entitlement is done according to the seniority district.⁸

Indeed, the Union further points out that when the Company provided the Union initially with the 2019 AV instructions showing Mr. Morin on the Quebec Seniority District⁹, it responded that same day to the Company as follows¹⁰:

⁷ paragraph 81 of Union Reply brief

⁸ Tab 8 of Union's Reply Exhibit book

⁹ Tab 9 of the Union Reply Exhibit Book

¹⁰Tab 10 of the Union's Reply Exhibit Book

Henry Morin is not even qualified to work as an engineer on the Winchester subdivision and has never worked a day on this subdivision. His holidays should be on the Belleville Engineers List.

The Company then acceded to the Union's request by revising the AV list showing Mr. Morin on the Belleville subdivision¹¹.

In the end, the Union asserts that the Company's interpretation of Article 29.21 ignores the provisions of Article 56, the District Local rules and the historical practice.

SUBMISSIONS OF THE COMPANY

The Company submits that nowhere in the Annual Vacation provision (article 29) is there any reference to "seniority districts". Rather, in numerous places, the parties have consistently referenced "the terminal". The Company points to article 29.26, where the parties agreed to "*...provide more opportunities to a greater number of employees during the summer...*" and added vacation slots to a number of terminals, including Smith Falls.

Five employees are listed in the Smith Falls Belleville Engineers portion of the AV list for 2019. The Company notes that these five employees are listed separately because they are the only employees who have prior rights on the Southern Ontario Seniority District. There is no reference or delineation of separate seniority districts within the Smith

¹¹ Tab 11 of the Union's Reply Exhibit Book

Falls terminal location or that the Locomotive Engineers who work there are separate and distinct from all the other listed terminals.

The Company also references article 29.21 and maintains that the plain and ordinary meaning of this provision is clear. The Company notes that the language is specific to the amount of time worked as a Locomotive Engineer or as a Conductor. The only reference to seniority is in regards to the employee's class of service. The location where the employee performed that service, in the Company's view, is immaterial. In terms of the seniority provision for Locomotive Engineers, article 56, the Company notes there is no reference to annual vacations and indeed lists Smith Falls as the main home terminal for Locomotive Engineers (article 56.09).

The Company also notes that that article 31, which deals with EDO's, is silent on seniority districts as well and any application that seniority districts may have to earned days off. Again, consistent with the provisions in the collective agreement, it only speaks to the "terminal".

The Company, in conclusion, submits that there has been no violation of the collective agreement. In particular, the destination of travel of Mr. Morin does not determine his preponderance. His preponderance is based solely on his service in his craft i.e. Locomotive Engineer. It was incumbent on the Union to clarify their position at the bargaining table and not attempt to alter the negotiated language through arbitration.

ANALYSIS

There is no dispute that within the list of Smith Falls Engineers, five employees are listed separate and apart from the other employees in the terminal because they have prior rights on the Southern Ontario Seniority District. These are the only employees, Mr. Gurprit Parmar (Assistant GM Crew Resources, Calgary) recalled in his testimony, who have exclusive prior rights on the Southern Ontario Seniority District. Mr. Parmar, a long-term employee who testified on behalf of the Company, could not recall any other Locomotive Engineers from the Smith Falls terminal having such prior rights on the Southern Ontario Seniority District.

The Company is correct in stating that the rules of interpretation dictate that the words of a collective agreement must be read according to their plain and ordinary meaning. A second equally important rule of interpretation pointed out by the Union is that all the provisions of a collective agreement must be read in harmony.

The crux of this dispute deals with Mr. Morin's eligibility for AV and EDO. I accept that the main provision which sets out the rights for AV is found at article 29 with its lead title of "Annual Vacation". Article 29.21 states in part that "*Trainpersons/Yardpersons who are qualified Locomotive Engineers, but not working full-time as such, at the time vacations are allotted, will have their Annual Vacation scheduled on the basis of their seniority in the class of service in which they performed a preponderance of work...*". The Union submits that the seniority rights, as set out under article 56, must also be

considered given that Locomotive Engineers from both the Southern Ontario Seniority District and the Quebec Seniority District work out of the same terminal in Smith Falls.

I must agree with the Company's interpretation of the vacation provision. The reference throughout article 29 is to "terminals", including Smith Falls and not seniority districts. Article 29 does not distinguish, for example, between the Smith Falls terminal and the terminal at St. Luc or Thunder Bay¹². There is no wording found in article 29, which states that AV and EDO vacation bidding by Locomotive Engineers should take place according to the seniority district where the preponderance of work is being performed. Article 56 also does not refer to any vacation bidding exceptions that might apply to terminals where there is more than one seniority district like Smith Falls.

As the Company points out, there is simply no language within the collective agreement which links the bidding of AV and EDO's with seniority districts. To read in such wording would amount to an alteration of the collective agreement which is prohibited by the rules of the CROA office. **See CROA 2590.**

Although Mr. Morin does not hold prior rights on the Belleville subdivision, he has nevertheless as a matter of practice invariably appeared in the past on the Belleville locomotive engineers lists for purposes of AV given that is where his preponderance has been established from year to year. The only exception was in 2019 when he was placed on the Winchester list which the Union objected to immediately. The CMC Bulletin Clerk

¹² Article 29.26 (a)

revised the AV list and placed Mr. Morin back on the Belleville Locomotive Engineers List after the Union registered its objection.

There would be no dispute here if Smith Falls had a single working seniority district like all the other terminals in Canada¹³. The fact that there are two districts emanating out of the same terminal requires the parties to choose which of the two districts is the more appropriate placement. Choosing the Bellevue District list where Mr. Morin performed all his work has been the historical choice of the Company with the exception of 2019. There is simply no logical basis for placing Mr. Morin on the Winchester Pool locomotive engineers list, as the Company attempted to do in 2019, for purposes of establishing AV when he did not perform any work in that district.

CONCLUSION

The arbitrator directs that Mr. Morin bid his AV and EDO for 2020 as part of the Belleville subdivision and continue to do so from year-to-year while he maintains his preponderance as a Locomotive Engineer in that subdivision on the Southern Ontario Seniority District.

Dated at Calgary, this 12th day of August, 2020



JOHN M. MOREAU, Q.C.

¹³ I agree with Mr. Campbell's comments in his email exchange with the Company representatives of November 4, 2019 where he states in part: "Other employees outside of Smith Falls aren't faced with the circumstances of the two seniority districts for Locomotive Engineers. You can't compare Mr. Morin to anywhere else on the system".

