

**IN THE MATTER OF AN ARBITRATION**

**BETWEEN**

**CANADIAN NATIONAL RAILWAY COMPANY**

**(the “Company” or “CN”)**

and

**TEAMSTERS CANADA RAIL CONFERENCE**

**(the “Union” or “TCRC”)**

**GRIEVANCE OF CONDUCTOR STRICKLAND**

**Concerning Article 51 of Agreement 4.16**

**AH-761**

**SOLE ARBITRATOR: John Stout**

**APPEARANCES:**

**For the Company:**

Vanessa Paquet – Manager Labour Relations

**For the Union:**

Ken Stuebing - Caley Wray

**HEARING HELD BY VIDEOCONFERENCE ON JANUARY 6, 2022**

## **INTRODUCTION**

[1] I was appointed by the parties pursuant to a Letter of Understanding made in accordance with item 21 of the November 26, 2019, Memorandum of Settlement between CN and the TCRC-Conductors, Trainmen, Yardpersons (CTY) , which establishes an arbitration process that conforms to the respective Grievance Procedure(s) and the Canadian Railway Office of Arbitration & Dispute Resolution (CROA&DR) rules and procedures.

[2] The parties filed extensive written briefs prior to the hearing. A hearing was held by videoconference on January 6, 2022.

[3] After carefully considering the parties' submissions, and for reasons elaborated upon below, I am dismissing the grievance.

## **THE CURRENT DISPUTE**

[4] The matter before me involves a grievance filed under Agreement 4.16, which is the collective agreement that applies to the Union's members working on CN's eastern mainline railroad.

[5] In particular, the Union filed a grievance on behalf of Conductor Strickland on May 6, 2017, alleging that the Company violated Article 51 of Agreement 4.16 by failing to provide rest.

## **JOINT STATEMENT OF ISSUE**

On January 25, 2017 Conductor Strickland was ordered to operate train X1085121 with an on-duty time of 1005 and he filed a rest message at 1725 with the RTC and his rest being due at 2205.

An attempt was made to have a Foreman transport a relief crew, which had been ordered for 1920, via high rail to meet the train at Thorlake due to inclement road conditions. However, due to Police activity at Milnet, no Foreman was permitted on the track.

Conductor Strickland arrived at Capreol going off duty at 0026 on January 26, 2017 some 2 hours and 21 minutes after their rest being due to commence.

It is the Union's position that the Company violated Articles 51, 85 and 85.5 along with Addendum 123 of the 4.16 Collective Agreement.

The Union submits that the Company is in violation of arbitral jurisprudence and the CIRB decision 315 and the May 5, 2010 mediated settlement as a result of this violation of Article 51 of the 4.16 Collective Agreement.

The Union contends that the Company failed to have Conductor Strickland in and off duty by the time rest was due to commence despite repeatedly reminding the Company of the time that their rest being due to commence at 2205.

The Union asserts that there was no reasonable attempt to relieve Conductor Strickland in advance as required.

The Union further asserts that this was a blatant and deliberate violation as they failed to order a relief crew in time to ensure that Conductor Strickland was in and off duty at the time his rest was due to commence.

The Union seeks a remedy of 1,000 miles as the Company continues to ignore their obligations under Article 51 of the 4.16 despite numerous favourable arbitration and CIRB awards obtained by the Union.

The Company disagrees with the union's position. The incident involving a suspect with a firearm barricading himself in a camp in the area and subsequent response from the OPP and Sudbury Police to secure the area was clearly unforeseen. The Company does not agree that the collective agreement was violated or that a Remedy is applicable given the circumstances.

### **AWARD OF THE ARBITRATOR**

[6] On January 25, 2017, Conductor Strickland was operating train X10851 21 from Hornpayne to Capreol, which is located at mile 0.0 of the Ruel subdivision. Conductor Strickland requested rest at 1725, which was well within the three hours required under Article 51. Conductor Strickland's rest was due at 2205.

[7] Upon receiving the rest request, the Company assessed the situation and determined that Conductor Strickland and his crew would not be able to make their objective terminal of Capreol. Therefore, the Company decided to have a Foreman

transport a relief crew, via high rail truck to meet Conductor Strickland's train at Thorlake, which is located at mile 39.9 of the Ruel subdivision. At 1725 the Company provided the relief crew with the required two-hour call and their on-duty time was 1920.

[8] At approximately 1945, the Greater Sudbury Police became aware of an incident, where a man with weapons had barricaded himself inside a home in the area. The evidence indicates that the police activity was in very close proximity to the Company's main line, near the Milnet crossing at mile 8.9 of the Ruel subdivision.

[9] The Ontario Provincial Police (OPP) and the Greater Sudbury Police attended at the scene with a tactical and rescue unit. CN was ordered to stop all traffic to ensure public safety. CN provided evidence that indicates that they reached out to the police and attempted to persuade them to allow the high rail truck to pass so that relief could be provided to Conductor Strickland and his crew. The police were concerned about safety and refused to accommodate CN.

[10] Conductor Strickland's train arrived at Raphoe, mile 19.5 at 2050, which is one station west of Milnet and closer to Capreol than Thorlake. According to CN, neither Raphoe nor Thorlake are accessible by road.

[11] In light of the police activity near Milnet on the mainline, it became apparent that the Company's plan for relief was no longer viable. Therefore, the Company determined that an alternative plan was required involving the transportation of a relief crew on the first available westbound train (Q10531). The relief crew train arrived at Raphoe at 2140. The train subsequently arrived at Capreol at 2358 and Conductor Strickland booked off-duty at 0026 on January 22, 2017.

[12] The Company relies upon Article 51.7(b), which provides:

Except in circumstances beyond the Company's control, such as accident, impassable track, equipment malfunction, plant failure, etc., trains service

employees will be relieved of duty by the time rest booked is due to commence.

[13] A January 15, 1986, internal document clarifying the application of Article 51 (the “1986 Interpretation”) has been relied upon by Arbitrator Michel Picher and quoted by him in **CROA 3280** and **AH 558**. The following excerpt is relevant to this matter:

Sub-paragraph 51.7(b) establishes the Company’s responsibility to relieve trainmen of duty by the time rest booked is due to commence. This applies in all cases, except where circumstances beyond the Company’s control make this impossible. A number of examples of such circumstances are contained in the sub-paragraph. And, while such circumstances are not necessarily limited only to the examples cited, the Company cannot rely on situations which do not affect its ability to comply with this requirement as a reason not to relieve trainmen by the time rest booked is due to commence. The question has been asked:

Q. IN CIRCUMSTANCES BEYOND ITS CONTROL, IS THE COMPANY DIVESTED OF THE RESPONSIBILITY OF RELIEVING TRAINMEN FOR REST?

A. No. Trainmen will be relieved as soon as possible after the time rest booked is due to commence.

[14] Article 51.4 provides train service employees with a mandatory right to book rest enroute. Train service employees are required to provide three-hour’s notice in accordance with Article 51.5 so that the Company has the time required to make a good faith assessment of the situation and if necessary, make the required arrangements for the rest to be provided pursuant to Article 51.7, see **AH 558**. Once the Company makes a good faith assessment of the situation and they determine that the employee cannot complete their tasks prior to the time rest booked is due to commence then they must make every reasonable effort to arrange for the employee to be relieved so the rest may be provided by the required time.

[15] In this case the Company made a good faith assessment of the situation and came up with a plan to provide relief so that Conductor Strickland would be

relieved in time for his rest. The Company acted immediately to implement the plan. Unfortunately, a situation subsequently occurred that was clearly beyond the Company's control involving the police prohibiting movement on their mainline. In my view, this situation falls squarely within the exception provided for in Article 51.7.

[16] The Union asserts that the Company ought to have made other arrangements and they provided a number of their own alternatives, which they say would have been viable options for relieving Conductor Strickland. However, I note that the Union conceded that the Company's original plan to provide relief would have most likely resulted in Conductor Strickland receiving his rest when it came due. Although, the Union advised that in their view the Company was "pushing the limit" in order to advance the train as far as at they could before providing the rest.

[17] In my view, the Company acted reasonably in the circumstances. The Company could never have foreseen that they would not be able to send the relief crew by high rail truck. But for the police situation, Conductor Strickland would have most likely been provided with relief and his requested rest. Once the Company became aware of the police situation, it made alternative arrangements to provide Conductor Strickland with relief as soon as possible.

[18] It is all too easy to second guess what the Company could have or should have done after the fact. There may well have been other options available to the Company. However, it is agreed that there were inclement road conditions on the date of the incident. I accept that road access in Northern Ontario is limited and travelling on roads during inclement weather can become unsafe. The Company did not delay in deciding on a plan and the arrangements they made were reasonable given the circumstances they faced at the time of Conductor Strickland's request for rest.

[19] Therefore, for all the reasons stated above, I find that the Company did not violate Article 51 of Agreement 4.16 and the grievance must be dismissed.

Dated at Toronto, Ontario this 17<sup>th</sup> day of January 2022.

A handwritten signature in dark ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

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John Stout - Arbitrator