

IN THE MATTER OF A DISPUTE

BETWEEN:

**TEAMSTERS CANADA RAIL CONFERENCE
("Union")**

- and -

**CANADIAN PACIFIC RAILWAY COMPANY
("Company")**

AH 797

JOINT STATEMENT OF ISSUE

DISPUTE:

The Company's preliminary objections concerning the Union's appeal related to the notice of cancellation of local rules served on December 31, 2021 and bulletin CMC 015-22 Job Abolishment and Establishment on January 5, 2022.

The parties agree that CROA rules apply including item 14 of the Memorandum of Agreement Establishing the CROA&DR.

UNION POSITION:

The Union maintains its grievances were properly submitted and the Company's preliminary objections ought to be dismissed.

The Union submitted both of its' grievances as well as a JSI within the time limits provided in Article 17 of the KLR Collective Agreement. The Company only brought forth its' objections when it provided a response to the Unions' second grievance submitted by the General Chairs Offices, which the Union believes has no merit.

COMPANY POSITION:

The Company submits the following preliminary objections regarding the Union's submission of its "grievance" as follows:

1. The Grievance Resolution process that applies is the one found in Article 17 of the KLR Agreement, not Article 40 of the core Consolidated Collective Agreement between the Company and the Teamsters Canada Rail Conference. The Union has not followed the process set out in Article 17 with the submission of this or the Union's earlier "grievance" and as such this case is not arbitrable;
2. The Company has no obligation to provide written grievance responses, as suggested by the Union, under Article 17 of the KLR Agreement and as such, this matter is not properly submitted to arbitration and is not arbitrable;
3. The Union's "grievances" were not filed in a timely manner as outlined in Article 17;
4. New allegations contained in the second "grievance", dated March 14, 2022, were not part of the original "grievance" and therefore are both improper and untimely; and,
5. The Union has improperly attempted to arbitrarily consolidate/ bundle multiple disputes into a single grievance, including each of the following:
 - a) CMC 015-22 Job Abolishment and Establishment on January 5, 2022;
 - b) Local Rules Cancellation Notice on December 31, 2021;
 - c) A request for a cease and desist;
 - d) Alleged "not ensuring the crew were off duty within 12 hours";
 - e) Alleged "use of multiple Managers in the running of trains";
 - f) "several other bulletins changing the assignment stat (sic) times, adding trainperson and so on"; and,
 - g) Allegedly "called a trainperson".

Based on all of the foregoing, the Company maintains this matter is not arbitrable and requests the Arbitrator be drawn to the same conclusion.

FOR THE UNION:

FOR THE COMPANY:

Wayne Apsey
General Chairman
TCRC CTY East

Lauren McGinley
Assistant Director Labour Relations

Ed Mogus
General Chairman
TCRC LE East

October 4, 2022

Hearing by Videoconference: November 15, 2022

APPEARANCE

FOR THE UNION:

Ken Stuebing, Counsel, Caley Wray
Wayne Apsey, General Chairperson, TCRC CTY East
Ed Mogus, General Chairperson, TCRC LE East
Dave Fulton, GC CTY West

FOR THE COMPANY:

Lauren McGinley, Assistant Director Labour Relations
Trisha Gain, Counsel

INTERIM AWARD

JURISDICTION

1. This is an Ad Hoc Expedited Arbitration pursuant to the Grievance Reduction Initiative Agreement of May 30, 2018 and Letter of Agreement dated September 7, 2021 between the parties. The protocols entered into by the parties provided for submission of detailed briefs filed and exchanged in advance of the hearing. The parties have agreed that I have all the powers of an Arbitrator pursuant to Section 60 of the *Canada Labour Code*.

BACKGROUND

2. Before addressing the preliminary objections it is appropriate to set out some basic facts. The parties to this dispute have what is referred to as a “core” Consolidated Collective Agreement between Canadian Pacific Railway and Teamsters Canada Rail Conference. They also have an agreement governing the Kawartha Lakes Railroad (KLR). The KLR is regarded as a short line and was formerly referred to as the Havelock/Nephton Internal Short Line. The Kawartha Lakes Railway was a Canadian rail line. It was created in 1996 to assume the operations of the Havelock and Nephton Subdivisions which serve the Peterborough, Ontario area.

3. On December 31, 2021, the Company issued a notice of cancellation of local rules for the KLR to be effective January 30, 2022. On January 5, 2022, the Company issued a bulletin concerning the abolishment of jobs and establishment of new jobs on the KLR which was rescinded by the Company on January 15, 2022. Prior to the abolishment there were normally three regular assignments with six to ten employees.

ANALYSIS AND DECISION

4. I am not providing a detailed analysis of the arguments which were presented, nor detailed written reasons for my ruling other than those relating to my decision on objections one to three inclusive found in the Joint Statement of issue above. I have reviewed the parties submissions and read and considered each of the arbitral authorities which I was provided.

5. The Company submitted that on February 2, 2022, 33 days following the notice of cancellation and 28 days following the bulletin, an 8 page written submission identified as an initial grievance was submitted by the Local Chairmen of TCRC Division 295 to then Superintendent Brandon Billingsley. This grievance concerned the foregoing cancellation and bulletin and was solely submitted on behalf of KLR employees. Notwithstanding the foregoing, the grievance was identified as being submitted under Article 17 of the KLR Agreement as well as under Article 40.02 Step Two of the Core Agreement.

6. CP maintains 40 days following their initial written submission, on March 14, 2022, the General Chairmen filed another submission with Vice President Eastern Region Ben Serena, asking the Company to accept this submission as a grievance under Article 17 of the KLR Agreement. It says this was the Union's misguided attempt to progress the dispute under Article 17.2 of the KLR Agreement. Based on the foregoing, the Company maintains this matter is not arbitrable and requests the Arbitrator be drawn to the same conclusion.

7. The Union argues that the Company's preliminary objections should be dismissed and this matter should proceed to a hearing on the merits. As a general overarching response to these technical positions advanced by CP, the Union notes that even if I were to find the alleged technical defects were assumed to be true, none would pose an unreasonable and unnecessary impediment to the Union's access to arbitration on the merits. Access to grievance and arbitration is a mandatory part of every Collective Agreement.

8. I agree with the Company that the KLR Agreement is distinguishable from the Core Agreement in that it was created under the principle of developing a problem solving relationship between management, employees and their unions. It allows the KLR to address their responsibility to innovatively meet the immediate and long term needs of Short line stakeholders while securing the employment relationship.

9. I find that there was a problem identification and problem solving attempt by the parties in the initial communications as also contemplated by the agreement. Although it was not relied on by either party, I recognize that the events took place at a time when all transportation companies and their union's were constantly adjusting to the realities of the COVID pandemic issues affecting operations and employees. While meetings were required they did not take place as the Company submitted.

10. In that regard, Article 17 of the KLR Agreement is clear in requiring the problem solving approach, direct meetings at the local KLR level and recognition for extending time limits, setting out:

ARTICLE 17: Grievance Resolution

17.1 Step 1 - Within 28 days of the cause of the grievance, the employee, **the union representative and the ISL Manager, will meet in an attempt to resolve the grievance.** This meeting will include the joint development of facts and their respective positions on the issue which will be advanced to the St L&H Chief Operating Officer and Union General Chair(s) in the event that the grievance is not resolved at this level.

17.2 Step 2 - The Chief Operating Officer and the General Chair(s) will attempt to resolve the dispute. In the event that a solution is not achieved within 28 days of being advanced to Step 2, the grievance may be directed to the Advisory Board for resolution short of proceeding to arbitration.

17.3 Application for arbitration will be made within 28 days of the Chief Operating Officer or the Advisory Board's ruling at Step 2.

17.4 **Time limits may be extended if mutually agreed by both parties.**
Emphasis added

11. I find that in this dispute the issues raised are clearly best addressed at the local KLR by union and management who best understand the unique short line operation.

12. The Canada Labour Code grants an arbitrator the power to extend time limits providing:
Power to extend time

60(1.1) The arbitrator or arbitration board may extend the time for taking any step in the grievance process or arbitration procedure set out in a collective agreement, even after the expiration of the time, if the arbitrator or arbitration board is satisfied that there are reasonable grounds for the extension and that the other party would not be unduly prejudiced by the extension.

13. Based on the facts and circumstances of this case I find that this is an appropriate dispute to exercise my discretion to extend time limits., I do so pursuant to my authority under the provisions of the Canada Labour Code, to allow this dispute to progress though the provisions of Article 17 of the LLR agreement. That process will begin within 28 days of this award as contemplated at Step 1.

14. I retain jurisdiction in the event of any dispute between the parties concerning the interpretation or implementation of this award or to resolve any outstanding issues not resolved by the parties.

Dated this, 18th, day of January, 2023.

A handwritten signature in black ink, appearing to read "Tom Hodges", is enclosed in a thin black rectangular border.

Tom Hodges
Arbitrator