

IN THE MATTER OF AN ARBITRATION UNDER THE *Canada Labour Code, RSC*
1985, c L-2.

BETWEEN:

Teamsters Canada Rail Conference

(TCRC)

-and-

Canadian Pacific Railway Company

(CP)

Denial of Automobile Allowance Claims (Welland Outpost)

Arbitrator: Graham J. Clarke
Date: December 22, 2022

Appearances:

TCRC:

K. Stuebing: Legal Counsel
W. Apsey: General Chairperson CTY East, Smiths Falls
E. Mogus: General Chairperson LE East, Oakville
J. Bishop: Vice General Chairperson LE East, Mactier
B. Baxter: Vice General Chairperson CTY East, Toronto

CP:

E. Allen: Labour Relations Officer, Calgary, AB
C. Clark: Manager Labour Relations, Calgary, AB
R. Araya: Coordinator, Labour Relations, Calgary, AB

Arbitration held via videoconference on December 13, 2022.

Award

BACKGROUND

1. On March 22, 2022, the parties signed a Memorandum of Settlement revising the arbitration process in Article 41 of their collective agreement. The arbitrator agreed to hear 4 Ad Hoc cases in 2022 and a further 8 in 2023 on the condition that the parties would plead no more than 2 cases per day.

2. The parties' Joint Statement of Issue (JSI)¹ described the specific dispute before the arbitrator:

For the week of March 16 – 22, 2020, Hamilton based employee Michael Koteles was called to work the Welland Outpost assignment TE11. Mr. Koteles claimed gas mileage trip tickets #130031384 for \$1118.88 and #130031365 for \$1065.50 which the auditor declined.

3. In the JSI, the TCRC, which had the burden in this case, argued in part:

There is no dispute that employees when called to protect work at the Outpost are to be provided transportation/accommodation/meal allowance. There is no dispute that if the employee is permitted to use their own vehicle, they will be compensated travelling allowance.

4. Also in the JSI, CP argued that the claims on their face were excessive and it never received any evidence justifying the amounts being claimed:

The Company maintains it is left in the dark with no substantiating evidence for how the Grievor came to allegedly accumulate over \$2,000 in gas mileage during the single week on job TE11 at Welland. Article 1.03 allows for 37 cents to be claimed per kilometre travelled at the most direct highway route. This would result in the Grievor travelling approximately 500KM each day. This is unsubstantiated and excessive.

Based on the foregoing, the Company maintains the two fuel claims are unsubstantiated and excessive. The Company requests the arbitrator be drawn to the same conclusion and deny the Union's request.

¹ Ex-5; Tab 1

5. For the reasons which follow, the arbitrator has concluded that the TCRC did not prove Mr. Koteles' entitlement to the amount of \$2184.38 for the week of March 16 - 22, 2020.

ANALYSIS AND DECISION

Railway Arbitrations

6. In their JSI, the parties emphasized that the governing rules² (Rules) for their railway model of arbitration apply:

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

7. Item 14 of those Rules obliges the arbitrator to decide the parties' stated issue and prohibits an award from modifying in any way the collective agreement:

14. The decision of the arbitrator shall be limited to the disputes or questions contained in the joint statement submitted by the parties or in the separate statement or statements as the case may be, or, where the applicable collective agreement itself defines and restricts the issues, conditions or questions which may be arbitrated, to such issues, conditions or questions. The Arbitrator's decision shall be rendered in writing, together with written reasons therefor, to the parties concerned within 30 calendar days following the conclusion of the hearing unless this time is extended with the concurrence of the parties to the dispute, unless the applicable collective agreement specifically provides for a different period, in which case such different period shall prevail.

The decision of the arbitrator shall not in any case add to, subtract from, modify, rescind or disregard any provision of the applicable collective agreement.

8. In AH793³, the arbitrator commented on the importance of a proper Record since railway arbitrations focus almost exclusively on legal argument. The railway model of arbitration does not contemplate significant changes being made to the issue during the hearing, especially when the parties expect an arbitrator to hear more than one case in a single day:

52. In the Introduction to this award, the arbitrator expressed concern about the disclosure in this case. The expedited railway model of arbitration, which,

² [Memorandum of Agreement Establishing the CROA&DR](#)

³ [Teamsters Canada Rail Conference v Canadian National Railway Company, 2022 CanLII 102424](#)

when it works, can hear multiple cases in a single day, cannot function without proper disclosure and a complete Record.

Accordingly, the arbitrator must decide this case in conformity with the parties' Rules and the JSI.

The Instant Case of Mr. Koteles

9. While the original grievance mostly dealt with deadheading⁴, the parties' JSI had a more limited scope.

10. The parties signed their JSI on November 10, 2022, just over a month before this arbitration. In the JSI, the TCRC claimed that CP owed Mr. Koteles \$2184.38 in mileage expenses for the week of March 16-22, 2020. That is the claim before the arbitrator.

11. During the arbitration, the TCRC seemingly amended its monetary claim significantly. The arbitrator suggested to the parties that they might want to consider a labour relations solution and avoid the cost of an arbitration award. Both parties, as is their right, preferred to receive a formal arbitration award.

12. For the following reasons, the arbitrator concludes that the TCRC has not met its burden to prove that CP owed Mr. Koteles \$2184.38 for the week of March 16-22, 2020.

13. The Record does not contain any claim from Mr. Koteles for this amount. Mr. Koteles had previously made claims for a travel allowance in January 2020 and CP had paid them⁵.

14. This does lead to a possible contradiction, however. How could the JSI state "Mr. Koteles claimed gas mileage trip tickets #130031384 for \$1118.88 and #130031365 for \$1065.50 which the auditor declined" if he had never made a claim?

15. In its Brief, CP insisted, unlike for the January 2020 period, that it had no record of any claim from Mr. Koteles:

⁴ Ex-5; Tab 5

⁵ Ex-4; CP Brief paragraphs 13-14.

2. The Company continues to be left in the dark with no substantiating evidence for how the Grievor came to allegedly accumulate over \$2,000 in gas mileage expenses during a single week on job TE11 at Welland.

3. Article 1.03 of the Collective Agreement allows for 0.37 cents to be claimed, per kilometer travelled, at the most direct highway route. To accumulate over \$2,000 in expenses, the Grievor would have had to travel well over 1000km every day. This would result in the Grievor travelling approximately 500KM each way each day. This is unsubstantiated, does not correspond to the facts and is excessive.

...

12. To be clear, the Company has NO record of these tickets ever being submitted, and as a result, has no record of the tickets being approved or declined. The tickets simply don't exist in the Company's systems.

13. The initial grievance correspondence originally concerned the Grievor's entitlement to deadheading at the beginning and end of the work week. This portion of the grievance has since been withdrawn by the Union. The grievance then went on to state "In addition, his gas mileage trip tickets #130031384 for \$1118.88 and #130031365 for \$1065.50 were denied." No other information was included in support of these alleged mileage claims.

16. The TCRC had the burden in this case. The Record contains no evidence that Mr. Koteles filed a mileage claim. While the TCRC in its Brief claimed the amount covered a longer period of time⁶, that is not the issue to which the parties agreed in their JSI. Their Rules, especially their explicit reference to Item 14 in the JSI, make it clear that the arbitrator must deal with the specific issue the parties agreed to submit to arbitration.

17. Even if one assumed Mr. Koteles filed a claim, the TCRC has not demonstrated how CP owed him \$2184.38 for the week of March 16-22, 2020.

⁶ Ex-1; TCRC Brief paragraphs 41-43.

DISPOSITION

18. For the foregoing reasons, the arbitrator dismisses the TCRC's grievance.

SIGNED at Ottawa this 22nd day of December 2022.

A handwritten signature in black ink, appearing to read 'G. Clarke', written in a cursive style.

Graham J. Clarke
Arbitrator