IN THE MATTER OF AN AD HOC ARBITRATION

BETWEEN

TEAMSTERS CANADA RAIL CONFERENCE (TCRC)

(The Union)

And

CANADIAN PACIFIC RAILWAY COMPANY (CP)

(The Company)

DISPUTE:

The layoff and lost wages of Windsor employee, Brad Potter, from June 26, 2017 to July 31, 2017.

JOINT STATEMENT OF ISSUE:

On June 26, 2017, the Grievor was laid off from Windsor. On July 17, 2017, the Grievor was given 2-week notice of recall for July 31, 2017 with the option to return immediately. The Grievor returned to service on July 31, 2017.

The Union disputes the Grievor's layoff and is seeking lost wages as a result. The Company maintains the layoff was in accordance with the Collective Agreement and no wages are appropriate in the circumstances.

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

UNION'S POSITION:

It is the Union's contention that due to the layoff in Windsor, the Company created a manpower shortage. This shortage resulted in senior employee Brad Potter being laid off and replaced by junior ones, violations of CBA articles 38, seniority is entrenched in the collective agreement.

The intent under the Memorandum of Understanding Between the CPR and Divisions 528 Trainmen for employees to work closer to home and therefore improve their work/life balance, also enhancing productivity and performance.

For the weeks of June 26 and July 3, the trainman position on assignment T27/28 was filled daily using employees from the London spareboard. For the weeks of July 10, 17 and 24, the vacancy was filled by Francis Rivard, a London based employee, who is junior to the Grievor, and was forced to Windsor.

As provided in the grievances Mr. Potter being the senior employee should not have been laid off

before a junior employee. The Union requests Brad Potter be compensated all lost wages with interest in the amount of $7111.11 as shown in the Division grievance.

COMPANY'S POSITION:
The Company disagrees with the Union's position.

The Company is required to properly crew size terminals and establish a need for employees. As a result of identified needs, Mr. Potter was laid off and subsequently recalled from layoff at a later date.

The Company maintains that the layoff and subsequent recall of the Grievor occurred in accordance with Article 65 of 2004 Collective Agreement.

The Company maintains that there was no violation of the Collective Agreement. The Union has failed to particularize their argument, by not providing the specifics of how these actions were in violation of the Item and Article.

The Company request that the Arbitrator be drawn to the same conclusion and dismiss the Union's grievance in its entirety.

For the Union:

Signed

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Wayne Apsey

General Chair

January 28, 2023

For the Company:

Signed

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Lauren McGinley

Assistant Director Labour Relations

Hearing: February 21, 2023 - By video conference

APPEARANCES

FOR THE UNION:
Ken Stuebing, Counsel, Caley Wray
Wayne Apsey, General Chair CTY East

FOR THE COMPANY:
Allan Cake, Labour Relations Officer
Lauren McGinley, Assistant Director Labour Relations

AWARD OF THE ARBITRATOR

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. At the hearing, the parties reviewed the documentary evidence and made final argument. The parties have agreed that I have all the powers of an Arbitrator pursuant to Section 60 of the *Canada Labour Code.*

BACKGROUND AND POSITION OF THE PARTIES

2. The Grievor, Brad Potter began service with the Company in 2011 and qualified as a conductor in 2012. On October 14, 2013 he was laid off and recalled on March 1, 2017. He was laid off again on June 26, 2017 and recalled on July 17, 2017 when he elected to exercise his right to take two weeks notice and return on July 31,2017.

3. The Union argues that this dispute arises from the Company's unexplained decision to unilaterally layoff the Grievor for five weeks in June and July, 2017. It says that without any regard to the requirements of the Collective Agreement, the Company laid off Mr. Potter and replaced him with junior employees from outside the Outpost Windsor terminal. The replacements were junior to Mr. Potter and worked at Windsor the entire time of Mr. Potter's layoff.

4. The Union submits that seniority is one of the most fundamental rights afforded to unionized employees. CP's CTY employees are no different. An employee's seniority under the Consolidated Collective Agreement is afforded protections and entitlements in a host of contexts. The Union submitted a review of Articles 84, 87, 90, 93, 109, 112 setting out their application to the facts in this case.

5. The Unions submits that as of June 2017, the Grievor was working the T27/28 assignment at Windsor. On June 26, 2017 he was laid off in Windsor. It maintains he was laid off for a total of five weeks. On July 17, 2017, the Grievor was given 2-weeks notice of recall for July 31, 2017. The Grievor returned to service on July 31, 2017. The Union argues that but for this improper layoff, Mr. Potter would have been able to continue working in Windsor.

6. The Union maintains that during this five-week period of Mr. Potter's layoff, assignment T27/28 trainmen remained vacant for the first two weeks. It was then filled daily using men from the London spareboard. The third week the trainman job was filled by Francis Rivard out of London Terminal. Not only is Mr. Rivard from a terminal other than Windsor, Mr. Rivard is also junior to Mr. Potter.

7. CP maintains that on June 14th, 2017, the Company issued a job abolishment bulletin, informing Windsor-based employees of the Company's intention to abolish a 3-person assignment (T25/T26) effective June 25th, 2017 at 23:59. On June 15th, 2017, the most junior active employee at Windsor, Brad Potter, was issued a 10-day layoff notice pursuant to Article 65.02 of the 2004 Collective Agreement. As of June 25th, 2017 at 23:59 the Company abolished the aforementioned T25/T26 assigned job as intended and the Grievor's layoff took effect.

8. The Company maintains that crew change documents are compiled weekly and summarize employees that are set to start vacation, employees set to return from vacation, employees on off-status as well as all assigned positions and the permanent and temporary owner of these positions.

In its submission summary, the Company reviewed many of the agreed facts. It acknowledged that it issued a 3-person job abolishment notice on June 14th, 2017 to take effect June 25th, 2017 at 23:59, as is the Company's right. It then issued a layoff notice to Windsor employee, Brad Potter (the Grievor), on June 15th, 2017 to take effect June 26th, 2017 at 00:01. The Grievor's layoff had taken effect on June 25th, 2017 at 23:59.

9. CP maintains that in the latter half of the week of June 26th, 2017, two Windsor Conductors unexpectedly went off, having their statuses changed from active to off-duty injury on June 29th, 2017. One of the employees did not provide any medical information to support their injury status or estimated date of return to work and the 2nd employee did not provide medical information until July 21st, 2017. The Company had no information of the unexpected off-duty injury absences that occurred during the weeks in which the Grievor was laid off. The Company was left in the dark when trying to understand the expected duration of these unexpected absences. The Company initiated recall of the Grievor on Monday, July 17th, 2017, exactly three weeks after the date in which his layoff took effect. The Grievor was offered the opportunity to return to work immediately.

10. The Company submitted that it is required to properly crew size all terminals across the CP network. There are many factors that go into the sizing of terminals (i.e. current train volume, forecasted train volume, assigned job increase/decrease, crew availability, etc.). CP stated that unfortunately in certain circumstances, layoffs must occur.

11. The Company acknowledges that it is quite costly to the Company to utilize a London employee to work in Windsor. Indeed, it was not disputed that London based employees are paid mileage plus an additional basic day of pay on top of their actual pay for such service when called to work in Windsor. It is also not disputed that London based employees began filling Windsor vacancies following the job abolishment and layoff of the Grievor at Windsor.

12. The Company submitted that is required to properly crew size all terminals across the CP network. CP argued that it did so in this case in accordance with the Collective Agreement. I find no evidence was provided to indicate any consultation with the Union regarding the abolishment or regulation of the spareboard.

ANALYSIS AND DECISION

13. There are two factors to be established in this dispute. First, whether layoffs were properly implemented. Secondly, the entitlement of this Grievor to any compensation.

14. The Union maintains that the Grievor was working T25/T26 in June 2017. The Company submits that the Grievor worked T25/T26 on June 7 and 8, 2017 in the week of June 4, 2017, when he was assigned to the Windsor Spareboard. What he worked in the lead up to the layoff is part of the basic facts of the grievance.

15. The Union argues that the abolishment of T25/T26 did not give CP surplus or extra employees. Rather, it says it is obviously the spareboard continued to be empty through this period resulting in the use of London based employees when the Grievor should have been working.

16. Both parties relied on the Memorandum of Understanding between CP and the TCRC Division 528 in their submissions. CP argues that there is no layoff language within this document. The Company acknowledged the Agreement made between Company and Union. However, it says it was handicapped in assessing the existing manpower and number of temporary vacancies. CP maintains its quite costly to the Company to utilize a London employee to work in Windsor. The

Company did not layoff the Grievor with the sole intention of replacing his work with London employees.

17. The Memorandum provides the intent of the parties in addressing the fundamental issues in this grievance at the very outset:

> Memorandum of Understanding Between Canadian Pacific Railway
> &
> TCRC Division 528 (Trainmen) and TCRC Division 528
> (Locomotive Engineers) London / Windsor
>
> It is understood that the purpose of this Agreement will be to address various issues related to the historic forcing of employees from the Home Terminal of London, Ont., to the Outpost Terminal of Windsor, Ont. and the **impact both financially and personally resulting from the proper application of the Collective Agreement. The intent of this agreement is that employees will work closer to their place of residence and therefore improve their work/life balance, also enhancing productivity and performance.** **Emphasis Added**

18. In the Company's Step 2 grievance response it also maintained it had more than sufficient employees in Windsor. The Superintendent stated:

> The Company is required to establish a need for employees and until we could ascertain which of these employees listed above were returning to work, we had more then sufficient employees as stated above.

19. Notwithstanding the language noted above, the evidence established, that in less than a week, London-based employees were being called to work in Windsor while the Grievor was laid off in Windsor. The cost to the Company was near double daily to use London-based employees and inconsistent with the stated intent of having employees work closer to their place of residence. I agree with the Company that there is no layoff language in the Memorandum and that in some cases, employees must be laid off. However, I do not find that this is a case in which employees must be laid off as argued by the Company.

20. I agree with the Company that it had sufficient number of employees at the time the Grievor was laid off. The Company acknowledged that it knew it would require positions filled by London based employees in the first week that the Grievor was laid off. As submitted by the Union, I find that nothing prevented the Company from meeting the intent of the Memorandum in a more economic manner. I find it could, and should have, consulted with the Union immediately. Instead, the Company continued to run short and force a London employee to work in Windsor. I find that CP required London employees to protect Windsor vacancies shortly after the time of layoff. At that point, it had the opportunity to rescind the notice of layoff to the Grievor. There is no evidence that the Grieevor's situation was raised at that time.

21. The Union argued that it was not consulted. I have no evidence of consultation with the Union prior to or after the layoff notice. CP maintains the layoff was in accordance with the 2004 Agreement. The letter of commitment following Article 73 of the 2004 Agreement provides in part:

> During the discussions, which culminated in the Memorandum of Settlement for Conductor-only operations dated June 4, 1992, the Union expressed concern with respect to board adjustments and the local practices which have developed over a period of time at various terminals. In particular, the Union expressed a concern that the Company could arbitrarily adjust boards thereby adversely affecting the earnings

> of employees on spareboards or unassigned pools and reduce the number of employees on SUB. The Company expressed a concern that there may not be sufficient employees available to meet the requirements of the service if pools and spareboards cannot be adjusted to meet operating circumstances.
>
> This will confirm that the Company will continue to consult with the Union representatives in adjusting freight pools and road/common spareboards based on operating considerations and requirements. Local officers of the Company and the Union will meet following ratification to determine the basis for these practices.

22. The commitment to consult is also found in Article 111.03 of the current collective agreement providing:

> SPARE BOARD REGULATION
> With expedited processing and payment of Spare board guarantees, the Company shall regulate Spare boards according to known and projected traffic offerings, reviewed weekly as at the present in consultation with local Union Representatives.

23. While there is no prohibition against layoffs in the memorandum above, the clear intent is to have employees working closer to home. Consultation is clearly intended. It is an important factor in the possible determination of the grievance. The importance of clear facts is obvious. I do not find the most basic facts alleged by the Union were established.

24. Consultation between the parties may have provided a clearer record of the facts and what took place nearly five years before the hearing into this matter. There is no evidence that the Union raised any issues regarding consultation requirements at the time or that the Company did not attempt to consult with the Union before the Grievor was laid off. The Grievor did not give evidence and he left the Company in 2018.

25. The Company provided evidence that the Grievor was on the spareboard at the time of the layoff. Not on T25/T26 as stated by the Union. He did work the assignment on June 7 and 8, 2017 when he was assigned to the Windsor spareboard. I find the Company's evidence and submissions in that regard compelling and logical. Given a lack of clarity on such basic facts, I cannot find that the Union has established a violation of the collective agreement to warrant compensation of this Grievor.

26. In view of all of the foregoing the grievance is denied.

Dated at Niagara-on-the-Lake, this 8th, day of May 2023.

Tom Hodges

Arbitrator