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

AH-864

SOLE ARBITRATOR: John Stout

APPEARANCES:

For the Company:
Anissa Borges
Roop Singh
Shereena Matthews

For the Union:
Ken Stuebing - Caley Wray
Jim Lennie
Glen Gower
Ed Page

HEARING HELD BY ZOOM VIDEOCONFERENCE ON APRIL 29, 2024

INTRODUCTION:

[1] I was appointed by the parties pursuant to a Letter of Understanding (LOU) 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 on the merits. A hearing was held by videoconference on April 29, 2024.

[3] The matter before me involves an individual grievance filed under the 4.16 Collective Agreement, which applies to the Union's members working in Eastern Canada (also referred to as the "Collective Agreement").

DISPUTE:

[4] The parties could not agree upon a Joint Statement of Issue. However it is clear from the material that the dispute arises from an allegation that Conductor Glenn was required to perform work at the final terminal that was beyond what is required of a Road Service employee under the Collective Agreement.

THE UNION'S EX PARTE STATEMENT OF ISSUE:

[5] The Union filed the following *Ex Parte* Statement of Issue:

> On September 20, 2021 Conductor M. Glenn was ordered from Belleville Conductor Only on train Z12031 19. Mr. Glenn, on arrival at Taschereau Yard was instructed to yard/switch out his train in the following manner.
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> Upon arrival at Taschereau, Conductor Glenn was instructed to pull his train into MI yard, then set over DTTX 458468, into MI06, coupling onto a BNSF 256314 already in MI06 which did not pertain to conductor Glenn's Train, and shoving into clear as instructed.
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> **UNION POSITION:**
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> It is the Union's position that the Company is in violation of Article 7.9,

11.7, 41, 85, 85.5 and Addendum 123 of the 4.16 Collective Agreement along with arbitral jurisprudence, CIRB 315 and 2010 Mediated Settlement.

The Union contends that the work that was required of Conductor Glenn was beyond what is contractually required of him at the final terminal as he was required to yard his train by performing switching not in connection with his own train at the final terminal and handling cars not in connection with his own train.

As the Company is well aware, the findings of CROA 4469 stand as written and were filed with the Federal Courts.

The Company is also award of the cease and desist ruling in CROA 4575 that stands as awarded.

The Company failed to respond to the Grievance at Step 3 in violation of Article 84 and Addendum 43 and is of prejudice to the Union progressing this and like grievances.

The Union asks that the Company is once again ordered to cease and desist from violating the Collective Agreement and ordering road service employees from performing the work of Yard service employees at the final terminal.

The Union seeks a significant remedy under Addendum 123 of the 4.16 Collective Agreement as the Company has been aware of the prohibition of performing work in this manner as was issued in CROA 4425, 4469, 4575, and AH606 along with other previous awards of the CROA office as well as commitments and representations made by the Company, CIRB awards and mediated settlements. The Union seeks a remedy in the amount of 1,000 miles at Yard Foreman rates of pay or as the Arbitrator deems appropriate to ensure compliance with the Collective Agreement.

THE COMPANY'S EX PARTE STATEMENT OF ISSUE:

[6] The Company filed the following *Ex Parte* Statement of Issue:

On September 20, 2021, Conductor M. Glenn (the grievor) was ordered in Conductor Only Service to train Z12031 19 from Belleville to Montreal. Upon arrival at Taschereau Yard the Grievor was instructed to pull his train into MI yard, then set over DTTX 458468, into MI06, coupling onto BNSF 256314.

The grievor claimed a "Pickup at Final" (PF) payment for setting off the cars in MI06 which he was compensated for.

The grievor submitted a claim for 100 miles for coupling onto cars not pertaining to his train. His claim was declined by the pay office.

COMPANY POSITION:

Conductor Glenn did submit a PF claim (12.5 miles) and was compensated accordingly.

During the time of the grievance, the Company was actively disputing whether the action of coupling onto cars not pertaining to their train was in fact a violation of the Collective Agreement. CROA had not rendered the last decision related to this issue until 2022 (after this grievance).

After the final CROA decision, the Company and the Union reached a settlement for all like cases. As such, the Company submits that this matter ought to be considered settled. Additionally, it is in no way blatant and indefensible as the Union suggests as the alleged violation occurred prior to the last decision.

The Union further alleges that the Company violated the Workplace Environment provisions. The Company has not harassed or intimidated Mr. Glenn, therefore the Company denies this allegation. The Union further alleges that the Company violated articles 56, 61, 84, and 85; however they have plead no facts to support this claim.

AWARD OF THE ARBITRATOR

[11] There is no dispute with respect to what occurred on September 20, 2021. There is also no dispute that the facts support a finding that the Collective Agreement has been violated by the Company. In fact, Arbitrator Sims found a violation of the Collective Agreement in similar circumstances at the very same Taschereau Yard in **CROA 4575**. The issue in dispute is the appropriate remedy that ought to be awarded.

[12] The Company maintains that this grievance was settled as part of a "global settlement" to resolve all "stacking grievances," which was reached on April 13, 2023 (the "2023 Settlement"). The Union disagrees, asserting that there was no global settlement, and this particular grievance was not included in the list of grievances attached to the 2023 Settlement.

[13] I agree with the Union that the 2023 Settlement does not refer to it as being a global settlement of all grievances involving "stacking." The 2023 Settlement was

with a separate TCRC General Committee (Quebec and Atlantic Region) that has no jurisdiction over this grievance and the list included in the 2023 Settlement does not include the grievance before me. Accordingly, I find that the 2023 Settlement, which is without prejudice or precedent, does not include the grievance before me.

[14] The Union seeks both a cease-and-desist order and a significant remedy under Addendum 123 in the amount of 1,000 miles at the Yard Foreman rates of pay.

[7] Addendum 123 addresses “repetitive violations of the Collective Agreement”. Arbitrator Picher addressed the application of Addendum 123 in **CROA 3310**, stating as follows:

> It does appear to the Arbitrator that the parties intended the letter to apply to situations where a violation of the collective agreement was blatant and indefensible, and clearly should not have been committed by local management. It is in this context that the deterrent character of the remedy is to be understood. The letter is an agreement between the parties to establish a disincentive to violations of the collective agreement being resorted to simply as a means of doing business, ensuring that violations of the collective agreement do not pay.

[8] Addendum 123 was recently considered by Arbitrator Cameron in **CROA 4895.** Arbitrator Cameron declined to award Addendum 123 damages, and instead awarded 100 miles as damages to the grievor.

[15] The facts in this case are like those set out in **CROA 4575**, which was decided on April 19, 2018. The Company sought judicial review of Arbitrator Sims award, but withdrew its application on May 10, 2022, after the events giving rise to this grievance. I have also been provided a number of similar decisions involving ”stacking”, see **AH 557**, **AH 560**, **AH 605**, **AH 606**, **AH 608, CROA 4469**, **CROA 4599M**. It is apparent in this case that similar repeated violations of the Collective Agreement have occurred both generally and at this location.

[16] In my view, the violation in this case was blatant and indefensible. While, the Company was seeking juridical review of **CROA 4575,** they did not seek a stay and as such the decision applied as final and binding and ought to have been respected

or at least the Company ought to be held accountable for their decision to ignore the decision.

[17] I agree with the Union that this is an appropriate case for an Addendum 123 remedy to act as a deterrent with the intention to ensure the correct application of the Collective Agreement. In this regard, the amount of damages to be awarded should be more than nominal and a meaningful incentive to comply with the provisions in the future, see *Canadian Freightways and Western Canada Council of Teamsters (Service Centre Closures)* 2013 CarswellNat 1004.

[18] I find that the 1,000 miles the Union is seeking is excessive. In my view an award somewhat similar to an agreement between the parties dated February 20, 2003 would be more appropriate. The February 20, 2003 agreement was a mediated settlement of violations of Article 41 and the agreement is not marked as "without prejudice." The February 20, 2003 agreement provided for 200 mile payments to the affected Conductor, Yard service employee and the local union for a total of 600 miles.

[19] No Yard service employee was identified in this case; the grievance is an individual grievance by a Conductor. In my view a payment to the Conductor of 200 miles and a payment of an amount equal to 400 miles at the Yard Foreman rate to the Union is reasonable and appropriate. I order that such payment is to be made within 60 days.

[20] In addition, I agree with the Union that this is an appropriate case for a cease and desist order. Arbitrator Sims made such an order in **CROA 4575**, which appears to have been ignored. The Company has had several years to address this issue and it is within their control to ensure that work is appropriately assigned. The Company has also represented that they have created an "action plan" to eliminate stacking. Therefore, the Company should have no reason to be concerned about compliance.

[21] Accordingly, I direct the Company to cease and desist from directing such work in this manner and have it performed by yard crew, or in some other manner provided for under the Collective Agreement.

[22] I remain seized to address any issue fairly raised by the grievance but not addressed in this award.

Dated at Toronto, Ontario this 13th day of May 2024.

John Stout - Arbitrator