IN THE MATTER OF AN ARBITRATION

BETWEEN:

TEAMSTERS CANADA RAIL CONFERENCE
RAIL CANADA TRAFFIC CONTROLLERS
(the "Union")

- and -

CANADIAN NATIONAL RAILWAY COMPANY

(the "Company")

Re: Interpretation Grievance (Montreal Moving Bonus)

Date/Place of Hearing: September 15, 2023, Edmonton, Alberta

Arbitrator: Cheryl Yingst Bartel

DISPUTE:

Dispute relating to the meaning of "regular earnings" as referred to in the relocation agreement between the Company and the Union dated February 20, 2020.

Appearing For the Company: Suzanne Fusco, Senior Manager, Labour Relations
Andres Hernandez Gutierrez, Jr. Labour Relations Associate

Appearing for the Union: Jason Bailey, General Chairman
Kieran Spencer, Local co-Chair
Michael Martinson, Vice General Chairperson
Philippe Masson, Local co-Chair

AWARD OF THE ARBITRATOR

Issue and Summary

[1] I was appointed by the parties to arbitrate this dispute on an *ad hoc* basis, using an expedited process agreed upon by the parties. This process is similar to that used by the Canadian Railway Office of Arbitration. Brief written and oral submissions were provided. No *viva voce* evidence was received.

[2] Four grievances were heard on the same day. Three of these four Grievances arose from the Company's move of its Rail Traffic Control ("RTC") work to Edmonton from Montreal. This is one of those Grievances.

[3] The issue in this Grievance relates to the interpretation of the phrase "regular earnings" as used in an agreement reached by the parties regarding relocation benefits.

[4] For the reasons which follow, "regular earnings" does not include overtime, transfer pay or punitive holiday pay. To prefer that interpretation would leave the word "regular" as meaningless.

Background

[5] The following background is applicable to both this Grievance and to the Grievances concerning Mr. Gabriel Lefebvre and Mr. Alexandrew Regallet, which have been released by this Arbitrator on the same day.

[6] In addition to a Collective Agreement (Agreement 7.1), the Company and the Union are signatories to an Employment Security and Income Maintenance Agreement (the "ESIMA"). The ESIMA is a comprehensive, lengthy document that provides for certain benefits on the happening of certain events, including relocation benefits and severance payments for position abolishment.

[7] By letter dated November 18, 2019, the Company provided notice to the Union of its intention to transfer RTC work associated with its Northern Ontario District to the RTC center in Edmonton, resulting in a five desk – and 13 swing position - reduction in Montreal. The desks impacted were listed. The positions in Montreal were to be abolished by this transfer. That letter appended the employees impacted by that change.

[8] Under Article 8.4 of the ESIMA, the parties agreed that when operational and organization changes occurred under that Article, they would negotiate "on items other than those specifically dealt with in The Plan with a view to further minimizing the adverse effects on employees."

[9] As the Company's decision to relocate this work was an "operational and organization" change as contemplated by Article 8.4 of the ESIMA, the parties entered into negotiations regarding RTC employees impacted by the move.

[10] On February 20, 2024, the Company provided to the Union a form of letter agreement summarizing what had been negotiated between them, "in accordance with Article 8.4 of the….ESIMA". This was a detailed agreement regarding benefit and bonus entitlement. The Union executed the letter, indicating agreement to those terms (the "February Agreement").

[11] On February 24, 2020 the Company sent a further notice under Article 8.1(a) of the EMISA (which stated "Amended") of the Company's intention to "centralize the work performed by the Montreal RTC Centre to the RTC Center in Edmonton. It was noted this would result in the "abolishment of the jobs in Montreal and the centralization of rail traffic control activities in Edmonton". A list of employees impacted was appended to this second notice letter. The Grievor was on this list.

[12] This second letter noted the centralization would be staged to ensure there was no interruption in service and provided the same dates for the changes as was contained in the February Agreement. The letter indicated the Company would be "prepared to meet in accordance with Article 8, paragraph 8.4 of the ESIMA…".

[13] This Arbitrator was not provided with the result of any other negotiations under Article 8.4, beyond the February Agreement executed prior to this notice. It is the February Agreement to which the parties referred.

Additional Facts

[14] Section 3 of the February Agreement contained "Special Early Relocation Benefits". That section provided certain benefits to employees who "advised of their intent to relocate to the Edmonton RTC Center by April 30, 2020". The Agreement stated the Company was prepared to offer certain incentives to such employees, including "bonuses" to be paid both in 2022 and in 2023 for continuing service.

[15] These bonuses were to be determined as a percentage of "regular earnings".

[16] A dispute has arisen between the parties regarding the meaning to be given to the phrase "regular earnings" and in particular what type of earnings are included in "regular earnings".

[17] The Union noted it sought clarity in the agreement regarding this phrase, but the Company refused. The Union urged that the Company provided assurances of this broad interpretation, however the Company denied such assurances were given.

Arguments

[18] The Company maintained the wording was "clearly written" and has meaning and that the term "regular" was used to differentiate those wages which were in addition to "regular" wages, such as overtime, transfer, or premiums, which it argued do not constitute "regular" wages. The Company urged there were no notes or evidence to support the Union's belief that "regular" wages would include the "extra" amounts, such as the significant overtime worked by those who relocated their roles to the Western Operations Centre in Edmonton. It argued if the intention was to include "total" wages – such as overtime – the

language would have reflected that. It noted that instead, the language refers to "regular" wages, which does not include shift premiums, transfers and overtime. It argued the Union is attempting to gain a greater benefit than was negotiated.

[19] The Union argued that the meaning of "regular earnings" was established and confirmed by both Union and management in the drafting of Article 8 in 2020. The Union alleged discussions had occurred with the Company and at Town Halls with its members, regarding what would be included in "regular earnings". It argued the Company's decision to reinterpret the language differently before the 2022 bonus was paid was not in good faith. It argued the Company's decision to include what it described as "vague language" had been a source of anxiety for its members, several of whom had just relocated from Toronto to Montreal the previous year; that multiple attempts were made to obtain clarity on this phrase; and that it had received clarification that "all earnings" would be counted as "regular earnings", including but not limited to draft pay, training pay and punitive rates accrued working on holidays and overtime.

Analysis and Decision

[20] The intent of contract interpretation is to find the *objective* meaning of a word or phrase that the parties used to record their deal. The modern principle of contract interpretation requires that words used by the parties be read in their "grammatical and ordinary sense", sometimes referred to as their "plain and ordinary" meaning. A further principle is that it *all* words are to be given meaning, as it is assumed the parties would not include superfluous words. Dictionary definitions are an acceptable aid for interpretation, unless there is evidence the word or phrase has a particular or specialized meaning. It is only if a contract is ambiguous that evidence or documentation beyond the contract itself can be used to determine meaning.

[21] When interpreting a contract, the *subjective* evidence of the parties is *never* admissible – whether a contract is ambiguous or not - because it is *always* irrelevant.[1] The Court of Appeal in *AUPE v. AHS* stated that the phrase "subjective intentions" "*at least*" means direct evidence of a party saying, "I think the phrase means x" or "at the time we entered into the contract, I thought that the provision meant y"[2]. The evidence of the Union members relied on by the Union are this kind of "subjective" evidence of intention and so irrelevant.

[22] An arbitrator must consider "surrounding circumstances"[3] which existed at the time the contract was made. The surrounding circumstances of this contract include its broad purpose to provide certain specified benefits to employees who chose to move when the RTC work was shifted to Edmonton. It is not disputed that: The benefits were to reduce the adverse effects for those employees who chose to move; the benefits were set out with specificity; the benefits were negotiated between the parties; some of those employees had already recently moved recently from Toronto to Montreal to follow this work and were provided extra benefits due to a second move; the Company was resistant to include any clarification of "regular earnings" in the February Agreement; and the parties executed the Agreement with the words "regular earnings" used to describe how the moving bonus would be computed, instead of negotiating greater specificity.

[23] Something that is "regular" is defined in the Mirriam Webster dictionary as something that is functioning at "fixed, uniform, or normal intervals…a regular income." In **CROA 435**, it was noted that the term "regular" earnings "in the normal sense can usually be taken to mean earnings for hours actually worked, exclusive of premiums, overtime and the like" (at p. 2). This is consistent with a recognition that the word "regular" must add meaning to the word "earnings". Otherwise, its reference is superfluous. The word "regular" as a descriptor of

[1] *AUPE v. AHS* ABCA 4 at paras. 30, 31, emphasis added.
[2] At para. 31, emphasis added.
[3] Which are noted in *Sattva* to be of a certain type of objective evidence undisputed by the parties.

earnings is also distinct from other descriptors the parties could have negotiated, such as "total" earnings.

[24] I do not accept that since these employees work in a 24/7 operation this resulted in an ambiguity for the phrase "regular earnings", as argued by the Union. Even if that were the case, the subjective intentions as expressed by Union members would still be irrelevant. Further, although they work in the railway industry, these employees are not paid on a mileage basis as trainmen. It was noted in **CROA 435** that determining "regular" earnings for trainmen involved different considerations (p. 2).

[25] I therefore cannot agree that shift premiums, overtime and transfer pay qualify as "regular" earnings, under this definition, for this type of employee.

[26] The Grievance is dismissed.

I retain jurisdiction to address any issues with the implementation of this Award and to correct any errors or omissions to give it the intended effect. My appreciation is offered to the parties for their patience.

DATED AND ISSUED this 30th day of January 2024

Cheryl Yingst Bartel
Arbitrator