

**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: Articles 9.4 and 12.9**

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

**Arbitrator:** Cheryl Yingst Bartel

**DISPUTE:**

The interpretation of Article 9.4 and Article 12.9.

**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] This Grievance involves the interpretation of Articles 12.9 and 9.4 of Agreement 7.1. The issue is whether the Company has responded in a timely way to claims for overtime under these Articles and - if not - whether those claims must be paid.
- [3] For the reasons which follow, the Grievance is allowed. Where the Company does not respond in writing to a time claim for overtime within 28 days of the submission of that claim, that claim must be paid.

### **Applicable Provisions**

#### Article 12.9

If overtime as claimed is not allowed, the employees will be notified in writing within twenty-eight (28) days from receipt of time claims, setting for the reason for disallowance.

#### Article 9.4

Any grievance not progressed by the Union within the prescribed time limits shall be considered settled on the basis of the last decision and shall not be subject to further appeal. Where a decision respecting a written claim for unpaid wages is not rendered by the Appropriate Company Officer within the prescribed time limits, the claim will be paid. The application of this rule shall not constitute an interpretation of the Agreement.

### **Facts and Arguments**

- [4] On occasion, employees are required to work in excess of their regular shift, incurring an entitlement to overtime wages. Certain RCT's have submitted claims for overtime that have not been paid within 28 days of submissions.
- [5] The Union argues that when the Company does not pay these claims within 28 days as described in Article 12.9, they must be paid out under Article 9.4. The Company argues that no entitlement to payment arises under Article 9.4. It argued Article 12.9 is not contained in Article 9, which addresses the Grievance Procedure and that no trigger of payment occurs under Article 9.4. It is only if grievances that are not responded to within 28 days under the Step 1 process that any payment is triggered. It argued the Company has responded to all Step 1 grievances within 28 days.

### **Analysis and Decision**

- [6] The principles of contract interpretation were set out in *CN v. TCRC (Moving Bonus Grievance)*, an Award issued by this Arbitrator, on the same day as this Award. That analysis will not be repeated, but is adopted and applied in this Award.
- [7] In summary, words must be given their "plain and ordinary" meaning; dictionary definitions can be used as an interpretive aid, if no specific meaning is otherwise intended; and parties are assumed to have used words deliberately, with every word to be given meaning.
- [8] Turning to this contract, Article 12.9 requires the Company to respond "within twenty-eight (28) days from receipt of time claims" (emphasis added). This wording is significant. It does *not* state the Company's response is to be made "within 28 days from receipt of a Step 1 grievance relating to the claim", as it could have. The Company's argument that this was the intention would result in amending the agreement to provide a different basis on which to run a timeline for a response, rather than the one agreed on in Agreement 7.1.

- [9] An arbitrator has no jurisdiction to make that amendment. That is a change that would have to be gained at the bargaining table.
- [10] The Company is required by Article 12.9 to respond to claims for overtime within 28 days *of receiving that claim*; not within 28 days of receiving *a grievance* involving that claim.
- [11] The next question is what is the impact of the Company's failure to respond under Article 12.9?
- [12] The Union argued payment is triggered under Article 9.4. I am persuaded this is the correct interpretation.
- [13] Article 9.4 states, in part: "...Where a decision respecting a written claim for unpaid wages is not rendered by the Appropriate Company Officer within the prescribed time limits, the claim will be paid".
- [14] There are several important words in this Article.
- [15] The first is the reference to a "claim" for wages. I cannot agree with the Company's position that Article 9.4 is only limited to "grievances". I am satisfied the use of the word "claim" is deliberate – and broader than a "grievance", which word is also referred to in Article 9.4.
- [16] Importantly, the word "claim" is the *same* word the parties chose to use in Article 12.9. Use of the same word is significant. Where parties use the same words, it is assumed they have intended the same meaning to apply.
- [17] Article 9.4 also notes what theses "claims" are made for: "unpaid wages", which is also a specific reference. The Merriam Webster Dictionary defines "wages" as "a payment usually of money for labor or services usually according to contract and on an hourly, daily, or piecework basis". I am satisfied that this reference to "unpaid wages" is broad enough to include monies owed for overtime work and that the reference to "unpaid wages" and "claims" links the two Articles.

[18] The result is that when the Company does not pay claims for overtime made by employees within 28 days *of receipt of the time claim*; Article 9.4 provides the remedy. If the Company does not respond to a time claim within 28 days that the claim is made, that claim must be paid out.

[19] The Grievance is allowed.

I retain jurisdiction to address the specifics of remedy, if the parties are not able to agree on amounts owed.

**DATED AND ISSUED** this 30<sup>th</sup> day of January 2024.

A handwritten signature in blue ink, appearing to read "Cheryl Yingst Bartel". The signature is fluid and cursive.

Cheryl Yingst Bartel  
Arbitrator