

IN THE MATTER OF AN ARBITRATION
BETWEEN
TEAMSTERS CANADA RAIL CONFERENCE
(the “Union”)

- and -

ALSTOM TRANSPORT CANADA
(the “Company”)

DISPUTE: The Company’s refusal to pay travelling expenses for Customer Service Ambassador (“CSA”) trainees to attend training at the Whitby Rail Maintenance Facility (“WRMF”).

APPEARING FOR THE UNION:

Robert Whillans (Counsel)
Gregory Vaughan (General Chairperson, GCA/GO)

APPEARING FOR THE COMPANY:

Ian Campbell (Counsel)
April Ignas, Industrial Relations Lead, Canada
Alexander Pesic, Senior Manager, Train Operations Metrolinx Operations
Jeremy Eldridge, Site Production Manager

Hearing Held in Toronto, January 17, 2024

Jurisdiction

1. This is an ad-hoc expedited arbitration consistent with the protocols of the Canadian Railway Office of Arbitration & Dispute Resolution. The parties agree that I have been properly appointed and have jurisdiction to hear this grievance.

Background

2. As noted at paragraph 7 of the Union submission, there is not an agreed upon joint statement of issue for this grievance.
3. It is common ground that CSA trainee training was previously done at the Willowbrook

Rail Maintenance Facility, or at the Ordan Drive Office in Mississauga. The Ordan Drive Office is some kilometers distant from Willowbrook.

4. On January 27, 2022, the Company issued Notice #TO-IN-22-018 to all Alstom Operational employees. The subject line referred to "Mileage Calculations for new Outpost locations" and made those mileage calculations effective January 2, 2022. The three new outpost locations were Richmond Hill, WRMF at Whitby, and Bradford. The calculations for the three outpost locations were measured from Willowbrook. The Whitby location was shown as 72 kilometers.
5. The Union submitted grievances on behalf of Customer Service Agent trainees for travelling expenses, citing Article 29 (Rail) of the collective agreement.

Positions Of The Parties

Union Position

6. The Union's position is that new-hire CSA trainees should be paid travelling expenses when they report to the Whitby facility for classroom training, in accordance with Article 29 (Rail) of the collective agreement.
7. The Union submits that Article 29 – Travelling Expenses applies, and specifically cited Article 29.1 in their written submission as follows:

"29.1 When an employee is required to work away from their designated on duty location or is required to attend a Company meeting away from their designated on duty location, the Company will determine whether they will provide transportation or whether they will reimburse the employee for the necessary cost of transportation. If an employee uses their personal automobile, the Company shall reimburse the employee at a rate of forty-five (\$0.45 per kilometer) for kilometers traveled via the most direct highway route each way for each day travelled between the employee's designated on duty location and the location the employee is required to travel."
8. The Union submission notes that the phrase "designated on duty location" is not defined in the collective agreement, but that Article 28 – Outposts contains compensation "*when an employee is called to protect an assignment away from their designated on duty location*". The Union points out that Willowbrook is common in each example set out in Article 28.1. The Union position is that Article 28 makes it clear that the "default" home base for every employee is Willowbrook. Further, the Union points to Company Notice # TO-IN-22-018 of January 27, 2022, as support for their position.
9. The Union also points to the term employees in Article 29 and consider CSA trainees as employees. The Union position is that there is no language excluding trainees from the term employees in Article 29.
10. The Union submission also included correspondence with Manager of Training Daniel Santos and Senior Manager, Train Operations Teri Alexander as evidence of the correctness of their position. The Union position is that those Company representatives did not dispute the Union's interpretation of the agreement.

11. The Union seeks direction that the Company must pay travelling expenses to CSA trainees required to train at WRMF, on the basis of the distance from Willowbrook to WRMF and return, as 144 total kilometres daily. The Union also seeks an order to make whole all trainees who previously attended at WRMF for training but did not receive travelling expenses as set out above.

Company Position

12. The Company position is that CSA trainees have no contractual entitlement to the travelling expense payment sought by the Union. The Company submission is that the conditions set out in Article 29 were not met, as newly hired CSA trainees do not hold an assignment, and thus do not have a designated on duty location. The Company position is that Article 29 has no application to CSA trainees. The Company stated that CSA trainees are briefed on the job requirements, including what they are to be reimbursed for, or not, when they are being hired. In other words, the Company position is that applicants accept the CSA trainee position knowing that they would not be paid travelling expenses to attend training at the Whitby facility.
13. The Company's written submission, paragraph 10, framed the issue as follows:

“Does Article 29.01 of the Collective Agreement require the Company to reimburse CSA trainees for traveling expenses where the trainee does not have a designated on duty location but attends initial classroom training at the Whitby Rail Maintenance Facility?”
14. The Company position is that there needs to be clear language in order to extend a monetary benefit to bargaining unit members. The Company position is that no such language exists for travelling expenses for CSA trainees, and thus there is no violation of the collective agreement.
15. The Company position also relies on past practice. The Company's written submission is that there have been years of consistent practice whereby newly hired CSA trainees required to attend classroom training have not been reimbursed for their travelling expenses. The Company position is that past practice is an aid to the interpretation of the actual wording of a collective agreement. The Company submission is that the Union acquiesced to this longstanding practice prior to classroom training being held at the Whitby facility, and it was only then that the Union started to insist on travel expenses being paid for classroom training.
16. The Company position is that their practice is entirely consistent with Article 29, and that the grievance must be dismissed.

Analysis and Decision

17. There was no joint statement of issue agreed on.
18. The Union's brief (Tab 2) contains an April 28, 2023, letter from General Chair Gregory Vaughn to Industrial Relations Lead April Ignas requesting agreement to bundle disputes over the application of Article 29 (Rail) for assigning CSA trainees to Whitby outpost into a policy grievance. No written Company response to the April 28, 2023, Union request was included in the written submissions. General Chair Vaughan wrote a subsequent letter on November 27, 2023, to Industrial Relations Lead April Ignas, (Union Tab 3), that

referred to the April 28, 2023, letter and stated: “Thank you for subsequently confirming the Company’s agreement”, referring to the Union request for a policy grievance. The Union’s November 27, 2023, letter then went on to state “Please accept this grievance in accordance with Article 8.0, clause 8.8 – Policy Grievance, of the collective agreement.”

19. On December 21, 2023, April Ignas formally responded to the Union’s November 27, 2023, letter (Union Tab 4). Notably, the Company response did not take issue with this being a policy grievance. The Company brief, at paragraph 1, refers to this as a policy grievance for CSA trainees. Both parties acknowledge that there are a number of similar claims outstanding. The Union brief (Tab 8) states that there are approximately 90 grievances to date.
20. Given all of the above, this matter will be considered as a policy grievance.
21. During the hearing the parties raised Articles 31 & 32, both of which deal with training. Neither article contains language relevant to this matter.
22. The Company submission focused on a mileage claim from Shedrick Forbes, dated January 31, 2022, which included both classroom training and on the job training (OJT). The claim showed 144 kilometers for each day of classroom training on January 5 and 6, 2022, at Whitby. On February 1, 2022, the day after the claim was submitted, an email response from email “Alstom Mileage” stated, in part, that *“I also had to remove 01/05 and 01/06 as class training does not qualify for mileage at WRMF. As you do not yet own a job, wherever you are training is considered your home base.”* The OJT portion of Forbes’ claim were paid.
23. The Union grieved the Forbes case on July 15, 2022, (Company Tab 1), alleging that the Company had misapplied Article 29.1. The Union letter, from Local Chair Carl Friday, alleges that there had been verbal confirmation from 3 Company Officers, in addition to 2 written confirmations, that the Forbes’ claim was valid and would be paid. Local Chair Friday also stated that there was communication between the Union and the Compliance Department that the claim was valid and would be paid.
24. The Company’s brief contained a reply from Rob Doan, the General Manager, Metrolinx Operations dated March 27, 2023 (Tab 4). GM Doan declined the grievance of Sheldrick Forbes for travelling expenses on January 5 and 6, 2022.
25. The Company noted that Sheldrick Forbes lives in Oshawa, and that the distance to the Whitby facility would be much less than the 144 kilometers claimed. The Union, at the hearing, argued that there could be other trainees who lived further away than the 144 kilometers. There is no reference to an employee’s residence Article 29.1, so the fact that Sheldrick Forbes resides in Oshawa is not considered relevant.
26. At the hearing, the Company representative acknowledged that CSA trainees were paid travel expenses for on-the-job training (OJT) as a past practice, even though that was not a requirement of the collective agreement. The Company brief, at paragraph 20, acknowledges the historic practice of paying mileage expenses for OJT, but states that “OJT is essentially an in-field assignment with a regular crew”. The Company does not view CSA trainee classroom training in the same way, and state that they have never paid travel expenses to CSA trainees for classroom training.

27. The Union position was that when CSA trainees were previously trained at Willowbrook that Article 29 simply would not have application, as Willowbrook would have been their designated on-duty location. What the Union's position did not address was the previous CSA trainee training that occurred at the Ordan Drive Office in Mississauga. There was no dispute about training taking place at the Mississauga location. At the hearing there was some disagreement between the parties as to the distance from Willowbrook to the Ordan Drive Office. For the purposes of this case, the Ordan Drive Office is not at Willowbrook and would require travel. The Company position is that CSA trainees were not reimbursed for travelling expenses when the classroom training was held at the Ordan Road Office. The Company cites their past practice as consistent with the collective agreement language.
28. The Union did not provide any evidence to contradict the Company position regarding past practice. Certainly, if CSA trainees had been paid for travelling expenses to the Mississauga location for classroom training, it would stand to reason that evidence of those claims and payments would have been included in the Union submission.
29. The Union brief did include correspondence in support of their position (Union Tab 8). An April 21, 2022, email from Local Chair Carl Friday requested clarification on payment of travelling expenses for CSA trainees. The Local Chair stated that it had come to his attention that trainees were being told *"that because they were in training, where they are assigned is their home base"*, and went on to state that these same employees were being compensated for travelling to another outpost location for training.
30. Manager of Training Daniel Santos replied later that same day as follows: *"I have received a response. Travel expenses (mileage) is paid to all trainees. If you can provide a specific example where this wasn't the case, then we can look to see if an error was made."*
31. The Union cites this as evidence that their position is correct. It is not clear as to whether the Santos reply refers to OJT only, which the Company has acknowledged they pay, or if it included CSA trainee classroom training. Manager Santos requested specific examples. It is not clear as to whether Local Chair Friday provided further specific information. What is clear is that claims for travelling expenses for CSA trainees in classroom training were not approved.
32. The Union also included a grievance on behalf of Thomas Bailey dated April 29, 2022. (Union Tab 1). The grievance set out the Union position alleging a misapplication of Article 29 (29.1) and stated that *"The past and currently known practice of the company is that Willowbrook is the homebase of each employee apart from those employees who choose to exercise their seniority and select an outpost as their starting/work location"*. The grievance sought compensation for CSA trainee Bailey's January 5 and 6, 2022 travelling expenses for classroom training, 144 kilometers for each of the two days.
33. The Company response was from Senior Manager, Train Operations Teri Alexander, dated May 27, 2022, (Union Tab 2) which appears in its entirety:

"Please accept this letter as confirmation of our conversation in regards to the travel time that should be paid in relation to Article 29. The employees who have filed valid grievances will be compensated appropriately."

We trust the above information to be satisfactory.”

There is nothing included on the content of the conversation, including what was agreed to or not. There is also no specific interpretation of Article 29 provided, nor is there any evidence that the Bailey claim was paid.

34. The Company responses cited by the Union do not provide definitive support for the Union position and are at best vague. The Company's initial written rejection of the Shedrick Forbes claim, the Company grievance responses, and the fact that no paid traveling expense claims have been presented by the Union demonstrate consistent Company rejections of the Union position. The April 21, 2022, letter from Local Chair Carl Friday to Manager Santos acknowledged that CSA trainees were being told that when they are in training that where they are assigned is their home base. On balance, I am satisfied that the Company position has been consistent throughout.
35. In my view, the case then turns on the collective agreement language, and the established practice.
36. No evidence has been provided that the Company paid CSA trainees travelling expenses to attend initial classroom training, even when the training previously took place at the Mississauga Ordan Drive facility. CSA trainee travelling expenses for initial classroom training appear to have become an issue only when the Company moved the classroom training to its Whitby facility.
37. The Union submission (Tab 9) included a September 12, 2022, letter from April Ignas, Industrial Relations Lead, Canada, which is a response to Union correspondence of September 6, 2022, regarding the scheduling of formal investigations. The September 6, 2022, Union correspondence was not included in the Union submission.
38. At issue there was the Company's new practice of holding formal investigations at Whitby, rather than Willowbrook. The Company stated this was due to the Whitby facility having more office space and being more suitable for investigations. The Company letter stated that they were prepared to pay mileage for employees whose investigations are scheduled in Whitby. The Union brief notes that CSA trainees were not excluded in the Company letter.
39. The Company letter of September 12, 2022, simply states, in part, that *“The Company is, however, prepared to pay mileage to the employees whose investigations are scheduled in Whitby in an effort to minimize the financial burden on the individuals being investigated.”*
40. The September 12, 2022, Company letter does not appear to be a grievance response, nor does it mention Article 29. The language of the Company letter is not acknowledging that the collective agreement requires payment for travel to investigations. As such, this letter does not assist the Union's position on payment for CSA trainees attending classroom training.
41. I would also note the significant difference in the correspondence between the parties on the issue of CSA trainees attending training, versus the issue of mileage for investigations. The question concerning investigations was directed to the Company's Industrial Relations Lead, who provided a clear written answer. That cannot be said for

the Union correspondence with certain Company representatives regarding this matter, which is vague, and provides no clear or definitive answer.

42. The Company brief asserts that a claim for monetary benefit must be based on collective bargaining agreement language, and that the onus is on the Union to demonstrate that Article 29 is clear and unequivocal that new hire CSAs are to be reimbursed for travelling expenses for classroom training. In support of their position, at paragraph 30, the Company cites the decision of *Okanagan University College v. Okanagan University College Faculty Assn.*³, which in turn relies on the decision of Allan Hope in *Noranda Mines Ltd. and The United Steelworkers of America, Local 898*, [1982] 1 W.L.A.C. 246 (B.C. Arb.), wherein the arbitrator states:

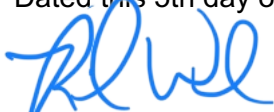
“55 It's useful in considering the proper interpretation to apply to the provision to give consideration to the onus arising in this arbitration. The onus is upon the union to establish that the employer has agreed in clear and unequivocal terms to provide a money benefit to the employees as part of the compensation they are to receive for their labour.”

43. The Company position is that the provisions of Article 29.0 do not clearly and unequivocally give CSA trainees in classroom training an entitlement to mileage expenses. The Company submission is that the collective agreement language establishes a number of qualifying conditions, one of which is that reimbursement is made only when an employee is required to work away from their designated on duty location. The Company position is that where the employee does not have a designated on duty location, there is no contractual obligation to provide reimbursement for the travelling expenses. The Company sees newly hired CSAs attending classroom training, in their capacity as probationary employees, as not being accorded all of the rights of a regular employee, in the same way that probationary employees are also not entitled to group insurance benefits or work clothing. The Company also relies on past practice whereby newly hired CSAs required to attend classroom training in Mississauga were not reimbursed for travelling expenses.
44. In my view, the language of the collective agreement cited by the Union does not directly set out payment for CSA trainees attending classroom training. Article 29.1 refers to designated on duty location; a term not defined in this collective agreement. The Company position is that CSA trainees do not yet have a designated on duty location, and therefore Article 29 does not have application. I find the Company position to be consistent with the language of the collective agreement. Moreover, there is no evidence of any claims being paid for CSA trainees claiming travelling expenses for classroom training.

45. The Union has well-articulated their case. That said, there is no specific collective agreement language, or past practice, to support their claim.

46. For the foregoing reasons, the grievance is dismissed.

Dated this 5th day of February 2024.

A handwritten signature in blue ink, appearing to read 'RWL', is positioned above the typed name.

Rick Wilson
Arbitrator