CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 4788

Heard in Gatineau and via Zoom Video Conferencing, July 14, 2021

Concerning

CANADIAN PACIFIC RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the Company's layoff of Hamilton based employees, resulting in lost wage claims of two (2) employees, Mr. John Molnar and Mr. Adam Lindfield, for a two (2) month period while laid off.

JOINT STATEMENT OF ISSUE:

On July 11, 2016, the Company laid off Mr. Molnar and Mr. Lindfield. The employees were recalled on September 11, 2016.

Union's Position:

For all the reasons and submissions set forth in the Union's grievances, which are herein adopted, the Union contends that the Company's layoff of Hamilton based employees, resulted in an insufficient crew base needed to protect the required positions. A disregard of Article 11 of the Collective Agreement (Article 15 of the Consolidated Collective Agreement), Item 5 and the Calling Procedures of the ESR Agreement.

These 2 employees were working in Welland at the time of layoff. Welland and Hamilton combined have 12 CTY positions and provisions for a spare board that need to be filled yet the Company laid off these 2 permanent employees leaving 10 active employees in a terminal that required more than 12 just to fill the assigned positions and spare board. In addition, the spare board had been left at 0 and there were no employees to cover ad hoc sick/EDO/personal day/AV/etc....relief. This Company initiated manpower shortage [that] left this terminal without a crew base sufficient to man the advertised positions (12 jobs and spare board).

Since the day of layoff July 11, 2016 until recall date of September 11, 2016, the assigned positions that Mr. Molnar and Mr. Lindfield were working were filled on a temporary basis with London based employees and the positions were never advertised for permanent ownership as the weekly placement process calls for. In addition, the spare board had never been advertised or filled.

During the layoff period, many jobs were called conductor only which had also proven that a manpower shortage existed in Hamilton/Welland. It is the Union's contention that due to the premature layoff and wrong crew base adjustments made, that the Company created a manpower shortage. With the return of the 2 employees from layoff, there still remains a shortage with a zero (0) spare board.

The Union has advanced a grievance on behalf of Mr. John Molnar and Mr. Adam Lindfield, requesting the Company compensate Mr. Molnar and Mr. Lindfield all lost wages with interest for the 2-month period that they were laid off with no loss of pension, benefits, or seniority, a recalculation of EDO's and a recalculation of AV rate. The Union requested that the Company adhere to the provisions of Article 11 of the Collective Agreement (Article 15 CCA), Item 5 of the ESR Agreement, as well as the Calling Procedures so to properly man and ensure the maintenance of crew base in Hamilton and Welland including spare board. In addition, the Union claims such other relief that the Arbitrator deems necessary in the circumstances.

Company Position:

The Company disagrees and denies the Union's request.

As put forth in the Company's Step III grievance response, the Union's position is misguided. The Company maintains Hamilton and Welland are outposts of London, and that the two junior employees working at the London terminal were laid off in accordance with the Collective Agreement. No violation of the Collective Agreement or the ESR Agreement has occurred.

The Union contends the Company has violated Article 11 of the Collective Agreement (Article 15 CCA) and Item 5 of the ESR Agreement. Not only has the Union failed to particularize their argument, by providing the specifics of how these actions were in violation of the Item and Article, they have also failed to provide support for their requested remedy.

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

FOR THE UNION:	**FOR THE COMPANY:**
(SGD.) W. Apsey	**(SGD.) D. Pezzaniti**
General Chairman	Director, Labour Relations

There appeared on behalf of the Company:

P. Sheemar	– Labour Relations Officer, Calgary
S. Oliver	– Manager Labour Relations, Calgary

And on behalf of the Union:

R. Church	– Counsel, Caley Wray, Toronto
W. Apsey	– General Chairman, Smiths Falls
E. Mogus	– Vice General Chairman, Hamilton

AWARD OF THE ARBITRATOR

1. This is an interpretation matter regarding layoff provisions applicable to employees of the London Home Terminal who are based in the Hamilton / Welland outposts.

2. At the relevant time, the Company was dealing with a seasonal reduction in business resulting from a client's plant closure. As a result, it intended to lay off a total of five employees of the London Home Terminal. The Home Terminal seniority list includes employees based at the London terminal and the Hamilton and Welland outposts. The Company laid off the two most junior employees on the seniority list: the Grievors, who were based at the Welland outpost. They were laid off for a period of two months, from July 11 to September 11, 2016. The Hamilton / Welland workload was not affected by the downturn in business. In fact, throughout the layoff period, the Company continued to advertise and fill the usual 12 CTY outpost assignments. In short, the number of assignments in Hamilton / Welland was not reduced but the local incumbents were affected.

3. The Union contends that the Grievors' layoff violates the parties' *Memorandum of Agreement Concerning the Expedited Service Runs Between London, Ontario and Buffalo, New York Terminals and the Toronto, Ontario and Buffalo New York Terminals* (the "ESR Agreement"*)*, which was negotiated with an effective date of April 6, 2016, approximately three months prior to the Grievors' layoffs. Essentially, the Union submits that employees working certain positions based in the Hamilton / Welland outposts have priority over Hamilton / Welland assignments, notwithstanding that they are part of the broader London Home Terminal.

4. I have given no consideration to the Union's other arguments, notably regarding the spareboard, Conductor-Only assignments, one-day only assignments and

Locomotive Engineers, as they are not relevant to the Grievors' situation. Similarly, arguments pertaining to different terminals are not relevant, as there is no dispute that the facts of this case pertain to a single terminal, the London Home Terminal and its outposts.

5. Regarding the preliminary issue raised by the Company, I find that the Union's position is clear enough and sufficiently particularized in the JSI to allow the Company to understand the case against it. The Union alleges a violation of the ESR Agreement in the layoff of employees based in Hamilton / Welland, while local assignments were filled with employees based in London. In making its case, the Union cited several provisions of the Collective Agreement not mentioned in the JSI. I disagree with the Company's position that this is an attempt to expand the Grievance. In any event, I have not found those provisions of the Collective Agreement to be helpful to the analysis. Also, pursuant to Article 14 of the *Memorandum of Agreement Establishing the CROA&DR*, this decision is limited to the issues raised in the JSI, specifically the ESR Agreement, which I consider to be the crux of this matter.

6. The relevant provisions of the ESR Agreement provide:

> ESR Agreement
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> 1.1 The intent of this agreement is to allow for the operation of trains in Expedited Service Run Service (ESR) between London and Buffalo; and Toronto and Buffalo.
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> 1.2 For the purpose of this agreement, London will be the home terminal for trains operated between London and Buffalo; Buffalo will be the away from home terminal.
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> 1.4 Hamilton and Welland will continue to be outpost terminals of London.

1.6 Unless specifically superseded in this agreement, the provisions of the Collective Agreement(s) will apply.

5.1 Hamilton and Welland are considered outposts of London.

5.2 Assignments may continue to be advertised with Hamilton or Welland as a reporting location.

5.7 The Hamilton Weekly Placement Process will remain in place as it pertains to the remaining assignments and common spareboard at that location. For AV purposes, Hamilton will be treated as an independent terminal.

5.8 Hamilton will maintain a crew base in order to staff yard assignments and/or road switchers and provide relief, as required.

7. Regarding the principles which govern collective agreement interpretation, the Union cited Arbitrator Wood in *Gourmet Baker Inc. v. United Food and Commercial Workers Union, Local 832*, [2004] M.G.A.D. No. 49. The following excerpts are useful to the analysis:

> 124. An arbitrator is often called upon to interpret a collective agreement. Basic principles of interpretation are well known. Of course, the fundamental object in construing a term of a collective agreement is to discover the intention of the contracting parties. As noted in Brown and Beatty, supra:
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> > “It has often been stated that the fundamental object in construing the terms of a collective agreement is to discover the intention of the parties who agreed to it. As one arbitrator, quoting from Halsbury’s Laws of England, stated in an early award:
> >
> > > “The object of all interpretation of a written instrument is to discover the intention of the author, the written declaration of whose mind it is always considered to be. Consequently, the construction must be as near to the minds and apparent intention of the parties as is possible, and as the law will permit:" (para. 4-2100)
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> 125. The parties are presumed to have intended what is stated in the collective agreement, so the meaning can be found in their express words; that is:
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> > "Accordingly, in determining the intention of the parties, the cardinal presumption is that the parties are assumed to have intended what they have said, and that the meaning of the collective agreement is to be

> sought in its express provisions:" (Canadian Labour Arbitration, supra, para. 4-2100)
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> 126. If the language used in a collective agreement is clear and unambiguous, interpretation should be confined to that actual language. On the other hand, if a provision is ambiguous, then in interpreting the provision one may rely on extrinsic evidence. ...
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> 127. In determining the intention behind a provision, one assumes that the language is used in its normal and ordinary sense, that is, its plain meaning. There are exceptions. Thus, if there are two possible interpretations to the plain meaning of a provision, an arbitrator is to be guided by the reasonableness of each possible interpretation (including whether one interpretation gives rise to an anomaly). As well, interpreting in the ordinary sense is to be considered in the context of whether such interpretation leads to an absurd or inconsistent result in light of the collective agreement as a whole. In summary:
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> > "In searching for the parties' intentions with respect to a particular provision in the agreement, arbitrators have generally assumed that the language before them should be viewed in its normal or ordinary sense unless that would lead to some absurdity or inconsistency with respect of the collective agreement, or unless the context reveals that the words were used in some other sense... It has been stated, however, that where there is no ambiguity or lack of clarity in meaning, effect must be given to the words of the agreement, notwithstanding that the result may be unfair or oppressive, or that they were deliberately vague to permit continuing consensual adjustments." (Brown & Beatty, supra, para 4-2200).

8. As mentioned above, during the Grievors' layoff period, the Company maintained the local work in Hamilton / Welland. Specifically, through the Hamilton / Welland weekly crew change process for the CTY, the Company continued to advertise 12 assignments for those reporting locations, as it may do under article 5.2 of the ESR Agreement. There is no issue about the workload assigned in Hamilton / Welland. What is contentious is how the layoffs were to occur.

9. The Company submits that there is a single seniority roster for the Southern Ontario District. Accordingly, it relies on the seniority rules of the Collective Agreement

and contends that layoffs must occur using the London Home Terminal seniority list, which includes employees based in London, Hamilton and Welland. This means that the most junior employees of the London Home Terminal, in this case the Grievors, were to be laid off and their assignments were to be made available to the more senior active employees of the home terminal. The Company submits that Hamilton / Welland work locations are not indicative of a home terminal. While the Company does not dispute that the ESR Agreement applies, it denies violating it.

10. In contrast, the Union argues that the very purpose of the ESR Agreement is to create special rules for the staffing of assignments in Hamilton / Welland. Notably, it contends that, under article 5.8 of the ESR Agreement, employees based in Hamilton / Welland have priority over yard and road switcher assignments.

11. As emphasized by the Company, I acknowledge that the Collective Agreement sets out the general layoff process negotiated by the parties. However, it is clear from the provisions of the ESR Agreement that the parties intended to negotiate some special provisions for Hamilton / Welland assignments, including staffing. In fact, Article 1.6 clearly sets out the parties' intent to have the provisions of the ESR Agreement supersede those of the Collective Agreement, where required in order to give effect to the ESR Agreement.

12. Articles 1.1, 5.7 and 5.8 of the ESR Agreement are key to the determination of the issue at hand. In my view, these provisions are clear and unambiguous. Indeed,

read together in their plain meaning, they provide that, to allow for the operation of trains in Expedited Service Run between London and Buffalo, the Company may continue to advertise assignments with Hamilton or Welland as a reporting location. When it chooses to do so, the Hamilton Weekly Placement Process will remain in place to fill those assignments and Hamilton will maintain a crew base to staff yard assignments and road switchers.

13. In this case, after the reduction in business that did not affect the Hamilton / Welland workload, the Company continued to advertise the usual assignments with Hamilton or Welland as a reporting location and maintained the Hamilton Weekly Crew Change process. However, the Company failed to maintain a Hamilton crew base to staff those assignments. Specifically, it laid off the Grievors, two employees based in Hamilton / Welland who worked road switcher positions and filled those assignments with more senior employees based in the London terminal. I find that this constitutes a violation of Article 5.8. Indeed, I can see no other meaning to this provision than prioritizing employees based in Hamilton / Welland on the assignments the Company chooses to advertise with those reporting locations.

14. Article 5.7 of the ESR Agreement states that, for the purposes of employees' annual vacation (referred to in Article 5.7 as "AV"), Hamilton will be treated as an independent terminal. Contrary to the Company's submission, Article 5.7 does not state that Hamilton will be treated as an independent terminal "only" for employees' annual

vacation purposes. Therefore, Article 5.7 is not inconsistent with the finding that Article 5.8 also creates a special regime for the staffing of assignments.

15. For these reasons, the grievance is allowed.

16. I order that the Grievors be compensated for all lost wages for the layoff period at issue and that they be made whole, notably regarding pension, vacation, benefits, earned days off and vacation, without loss of seniority.

17. I remain seized with respect to the implementation of this decision.

December 13, 2021

JOHANNE CAVÉ
ARBITRATOR