

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 4796

Heard via videoconference and in Gatineau, December 15, 2021

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The establishment of Aldershot as a new terminal.

JOINT STATEMENT OF ISSUE:

CN announced that, it would be assuming control of the Hamilton Yard and N&NW Spur (the "Hamilton Line") and the Hagersville subdivision. As part of the operational restructuring, CN also introduced plans to establish a new terminal at Aldershot.

The Union filed a grievance April 10, 2018 alleging that CN was in violation of the 4.16 Agreement by failing to serve a Notice of Material Change in accordance with Article 79.

The Company declined the Union's grievance, maintaining that the establishment of Aldershot as a Terminal did not require notice as contemplated by Article 79 as there were no significant adverse effects upon the employees.

The Union's Position:

The Union's position is that the Company is in violation of Articles 79 of the 4.16 Collective Agreement where the Company has failed to issue a material change notice in this instance. The Company has failed to identify and address the adverse effects on the employees of Toronto South as a result of the plan to establish a new home station and reduce the work that has been the entitlement of Toronto South employees since 1997.

The Union submits that these changes initiated by the Company at the Terminal of Toronto South had significant adverse effects on those employees currently assigned to the home station of Toronto South, and in addition, significant adverse effects to other employees in terminals across the 17th seniority district or face the possibility of lay off.

The Union further submits as a result of the changes proposed by the Company it cannot be disputed that these initiated changes in the Toronto South Yard and Road assignments will create a surplus of employees at the home station of Toronto South and those employees deemed to be surplus as a result of the Company initiated changes will be required to permanently relocate themselves and their families to other locations across the 17th seniority district in order to remain gainfully employed with CN Rail.

Based on the Company's proposed changes, it is the Union's position that the change of home station should trigger a Material Change Notice being properly served and negotiated as per the provisions of Article 79.1 of Agreement 4.16.

The Company's Position:

The Company disagrees with the Union's position. It is the Company's position that the reintegration of the previously leased properties would result in an overall increase in employment opportunities, therefore, Article 79 is not applicable. Even if adverse effects existed, which has not been established by the Union, it does not trigger a requirement for a material change as the purported adverse effects did not meet the threshold of "significant adverse effects" as contemplated under Article 79 of Agreement 4.16. In addition, despite multiple discussions, including during national negotiations, the Union has proffered no evidence to date to support their allegations. Notwithstanding the foregoing, the grievance must be rejected as the Union has not identified any adversely impacted employees. There is thus no basis for the claim that the Collective Agreement was violated.

FOR THE UNION:

(SGD.) J. Lennie

General Chairperson CTY-C

FOR THE COMPANY:

(SGD.) V. Paquet

CN Labour Relations Manager

There appeared on behalf of the Company:

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| V. Paquet | – Manager, Labour Relations, Toronto |
| M. Boyer | – Senior Manager, Labour Relations, Montreal |
| S. Roch | – Manager, Labour Relations, Montreal |
| J. Torchia | – Director, Labour Relations, Strategy Ops, Edmonton |
| E. Sauvé | – Manager, Crew Systems and Planning, Toronto |

And on behalf of the Union:

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| M. Church | – Counsel, CaleyWray, Toronto |
| J. Lennie | – General Chairperson, Sarnia |
| G. Gower | – Vice General Chairperson, Rockland |
| E. Page | – Vice General Chairperson, Burlington |
| P. Boucher | – General Chairperson, Trenton |
| M. Kernaghan | – Vice General Chairperson, Trenton |
| C. O'Connor | – Local Chairperson, Grimsby |

AWARD OF THE ARBITRATOR

1. The issue in this grievance is whether the Company's decision to establish a new terminal at Aldershot, formerly an outpost of the Toronto South Terminal (TST), constitutes a material change as set out in collective agreement 4.16, thereby triggering certain obligations for the Company. The Union submits that this decision constitutes a material change. The Company disagrees.

Background

2. The following collective agreement definitions are important to this case:

Home Terminal: The terminal from which an assignment operates or from which an assignment is bulletined to operate.

Home Station: The terminal where the spare board is maintained and/or from which relief is supplied for employees on assignments.

Subsidiary Station: A location that is the home terminal of an assignment but is not the home station for employees who operate or provide relief for such assignments.

3. In 1997, the Company entered into a long-term agreement leasing out its Hamilton business. This led to the closure of the Hamilton Terminal and to the layoff of employees. There is no dispute that this involved significant adverse effects for conductors, which triggered the application of the material change provisions of the collective agreement.

4. After the closure of the Hamilton Terminal, the Aldershot, Oakville and Brantford yards, which were formerly part of the Hamilton Terminal, became subsidiary stations (commonly referred to as “outposts”) of TST. As a result, each outpost became the home terminal for its respective assignments and TST became the home station for employees operating or providing relief for the assignments at these outposts.

5. In 2018, the 1997 lease was not renewed and the Company reintegrated the business which had led to the closure of the Hamilton Terminal. This resulted in the creation of new conductor positions. The Company also reorganized its operations. It established Aldershot as a terminal (replacing the former Hamilton Terminal), effective December 14, 2018. The Aldershot, Oakville and Brantford outposts of TST were converted back into yards, within the new Aldershot Terminal. Importantly, the assignments operating from each location did not change. However, a new spare board was introduced in Aldershot. Therefore, the Aldershot Terminal replaced TST as the home station for the assignments operating from Aldershot, Brantford and Oakville.

6. TST and the Aldershot Terminal are approximately 80 kilometres apart and are both part of the 17th seniority district.

7. In April 2018, when the Company informed the Union of its intention to establish the Aldershot Terminal, it stated that it would not issue a notice of material change because there would be no significant adverse effect on employees. The Union disagreed and filed a grievance.

Analysis

8. Article 79.1 of the collective agreement defines what constitutes a material change and sets out the parameters applicable in such cases:

79.1 Prior to the introduction of run-throughs, changes or closures of home stations (including those brought about by the sale of a line), or the introduction of new technology initiated solely by the Company and having a significantly adverse effect on employees, the Company will:

(a) Give at least 180 days' advance notice to the Union of any such proposed change, with a full description thereof and details as to the anticipated changes in working condition; and

(b) Negotiate with the Union measures to minimize any significantly adverse effects of the proposed change on employees but such measures shall not include changes to rate of pay.

(c) While not necessarily limited thereto, in the case of run-throughs and other changes described in this paragraph 79.1, the matters considered negotiable will include the following:

- (1) Appropriate timing
- (2) Appropriate phasing
- (3) Hours on duty
- (4) Equalization of miles
- (5) Work distribution
- (6) Appropriate accommodation
- (7) Bulletining
- (8) Seniority arrangements
- (9) Learning the road
- (10) Use of attrition
- (11) Deferred separation

NOTE: For the purposes of this Article 79, home station is defined as the terminal where the spare board is maintained and/or from which relief is supplied.

[Emphasis added]

9. Based on this provision and the facts of this case, the Union has the burden of establishing the following two elements to demonstrate a material change: 1) a unilateral change of home stations by the Company; and 2) a resulting significant adverse effect on employees.

10. Article 79.6 of the collective agreement sets out the exceptions as to what constitutes a material change, including normal changes inherent to the nature of the work:

79.6 The changes proposed by the Company which can be subject to negotiation and arbitration under this Article 79 do not include changes brought about by the normal application of the collective agreement, changes resulting from a decline in business activity, fluctuations in traffic, reassignment of work at home stations or other normal changes inherent in the nature of the work in which employees are engaged.

[Emphasis added]

Unilateral Change of Home Stations

11. The Union argues that the change implemented by the Company constitutes a *change in home stations*, as per the description of a material change under Article 79.1.

12. In contrast, the Company submits that the provision applicable in this case is Article 79.6, which sets out exceptions to what constitutes a material change. Specifically, the Company claims that the creation of the Aldershot Terminal was a *normal change inherent to the nature of the work in which employees were engaged*. Accordingly, by operation of Article 79.6, this “normal change” does not amount to a

“material change”, and it is excluded from the scope of article 79.1. The Company relies on this Office’s decisions in **CROA 332, 1444, 2893 and 3332**, which establish that moving assignments from one terminal to another is *inherent to the nature of the work*, and therefore does not constitute a material change.

13. The circumstances in the case before me are factually different from those upon which the Company relies. This is not a case where assignments moved from one terminal to another. On the contrary, the Company emphasized that “the work itself did not change locations” further to the establishment of the Aldershot Terminal. Therefore, I am not persuaded by the Company’s argument that this situation is an exception to what constitutes a material change, as described in Article 79.6.

14. As mentioned earlier in this award, it is significant that an additional spare board was established in Aldershot. From 1997 to 2018, TST was the home station for the Aldershot, Oakville and Brantford outposts. That is to say, TST was the terminal where the spare board was maintained and/or from which relief was supplied for employees on assignments in these outposts. When the Company established the Aldershot Terminal, the home station for assignments in Aldershot, Oakville and Brantford changed from TST to the new Aldershot Terminal. In my view, that is precisely what is meant by the expression *change of home stations*, set out in Article 79.1. For this reason, the first element composing a material change is met: there was a unilateral decision by the Company to change home stations.

Significant Adverse Effect

15. This case turns largely on the second element of a material change, namely whether the change of home stations had a significant adverse effect on employees.

16. This Office has outlined characteristics of significant adverse effects that can establish a material change. Notably, the adverse effect must render employees' positions redundant, superfluous or otherwise undermine their job security (**CROA 1167 and 3083**), or significantly affect earnings, work opportunities or lead to demotion or layoff (**CROA 2364**). An adverse effect must be identifiable and quantifiable; it does not include unforeseen or indirect impacts (**CROA 2257**).

17. I turn now to the Union's submissions regarding the alleged adverse effects resulting from the establishment of the Aldershot Terminal.

Reduced Size of TST

18. The Union says that the size of TST was considerably reduced, from 47 to 13 road service employees, as a direct result of the establishment of the Aldershot Terminal.

19. Article 79.1 provides that a change must have a significant adverse effect on employees to be material. The fact that the TST size was reduced does not establish that employees were significantly adversely impacted.

Employees Cut Off at TST

20. The Union alleges that four TST employees were deemed surplus because of the establishment of the Aldershot Terminal: two were cut off on the day they completed their training and qualified as conductors, and two were cut off mere days after being qualified. The Union states that these employees were the most junior in the district and were therefore unable to select an assignment, and so they were forced to take a layoff. The Company's answer to the Union's allegation is that these employees were trainees when the Aldershot Terminal bulletins were posted, and were therefore ineligible to bid on assignments.

21. In the context where no assignments were eliminated through the Company's reorganization of its operation, I am not persuaded that these four employees would have had work opportunities had TST remained the home terminal for the assignments in Aldershot, Oakville and Brantford.

22. The Union also raises the case of an employee who did not bid on assignments. It claims that a notice of material change would have provided this employee the opportunity to declare if he wanted to move to another terminal. The evidence shows, however, that a manager contacted this employee to seek his preferences and entered his bids after the closing date. The Union provided no details as to what this employee might have preferred as compared to the assignments he secured through the bid, or any other issue which could be considered a significant adverse effect on this employee resulting from the establishment of the Aldershot Terminal.

Loss of Road, Yard and Spare Board Assignments at TST

23. There is no dispute that the establishment of the Aldershot Terminal in 2018 resulted in a reduction of work opportunities at TST. Specifically, the Company reassigned 11 of the 19 road assignments from TST to the Aldershot Terminal, representing 58% of TST road assignments. It also reassigned three yard assignments, representing 13% of TST yard assignments, which the Union claims were some of the more desirable jobs as employees had weekends off. Moreover, road spare board opportunities declined from 17 to 7. The question is whether these reductions had a significant adverse effect on employees.

24. The Company submits that, at the time of the establishment of the Aldershot Terminal, all TST employees were given the opportunity to exercise their seniority to bid on regular or spare board assignments at TST or at the Aldershot Terminal. Employees bid voluntarily and all assignments were filled on this basis; no employees were forced to take an assignment.

25. According to the Union, employees did not genuinely have a choice. In some instances, if they wished to remain employed, they had no option but to bid on regular or spare board assignments at the Aldershot Terminal.

26. The Company reiterates that the assignments themselves did not change location. Further to the bids, most employees kept the assignments they were working prior to the establishment of the Aldershot Terminal. Employees who maintained or

secured an assignment in Aldershot, Oakville or Brantford automatically changed home stations, from TST to the Aldershot Terminal.

27. The Union did not present evidence of a significant adverse effect on employees, whether they remained at TST or transferred to the Aldershot Terminal. For example, it did not show that employees who remained at TST were unable to get their previous road, yard or spare board assignments or weekends off because of the change of home stations. Moreover, as further detailed below, the evidence is that most employees' overall earnings increased and that any decline in earnings could be explained by other factors. There is no evidence of layoffs or of employees otherwise losing their employment because of the establishment of the Aldershot Terminal.

28. For these reasons, I am unable to conclude that any employee suffered a significant adverse effect from the work assignments they secured after the change of home stations.

Lost Personal Leave Days and Vacation Entitlement at TST

29. There is no dispute that after the establishment of the Aldershot Terminal, employees' individual entitlement to personal leave days ("PLDs") and vacation remained the same. However, the Union alleges that employees who remained at TST suffered a significant adverse effect from the reduced number of employees who can be off on PLDs or vacation at the same time. It claims that TST lost two of its daily PLD allotments, which were transferred to the Aldershot Terminal, thus reducing the

opportunities for TST employees to take PLDs. Similarly, the number of TST employees who can take vacation at the same time was reduced with the establishment of the new terminal.

30. In my view, the proportion of PLDs and vacation allowed at once is more relevant than the net number. The Union did not demonstrate that the ratio of PLDs or vacation allotments at TST was reduced beyond the proportion of employees who changed home stations. Nor did it demonstrate any other significant adverse effect on TST employees.

Reduced Earnings

31. There was no evidence demonstrating that employees' overall earnings were reduced because of the change of home stations. In fact, a document submitted by the Company comparing TST employees' earnings for the six months prior to the establishment of the Aldershot Terminal and the six months after, shows that most employees' total earnings increased. The Company indicated that any decreased earnings were due to employees' absences, including missed trips, PLDs, sick days, disability leave, injury on duty, union leave, leave of absence and/or training. Though the Union disagreed that all reductions in earnings were due to absences, it provided no specifics. Most importantly, the Union did not demonstrate that reductions in earnings were due to the change of home stations.

Change to Switching Limits

32. The Union claims that the Company unilaterally set up the switching limits of the Aldershot Terminal by altering those at TST, arguably to justify reassigning Train L543 (road assignment) from TST to the Aldershot Terminal. The issue of switching limits is the subject of a separate grievance, and therefore not a matter to be determined here.

33. For the purposes of this grievance, I note that the assignment was operated and continued to operate from the Oakville yard – it only changed home stations. The Union did not demonstrate that the change in switching limits caused a significant adverse effect to employees.

Past Practice

34. Finally, the Union submits that past practice regarding changes in home stations dictates a notice of material change in this case. The Union relies on two examples where the Company effected changes in home stations and issued a notice of material change: when the Company closed the Niagara home station and created the new home station of Port Robinson, formerly an outpost, 11 kilometres away, in 2012; and when the Company combined the Moncton North and Moncton East home stations to form the new Moncton home station in 2018.

35. While the Union alleged past practice, it did not make a case to support the requirement for such an aid to interpretation of the collective agreement. Similarly, it did

not demonstrate, or even argue, that an estoppel was established through detrimental reliance (see **CROA 4606**). Simply referring to prior similar situations between the parties, without providing factual details, does not allow for a finding of past practice.

Conclusion

36. The facts of this case are materially different from those in the cases cited by the Union. The Aldershot, Oakville and Brantford yards had been outposts for two decades when the Company established Aldershot as a terminal in 2018. Assignments were already operating from those locations and employees were able to bid and continue working on those assignments.

37. On the evidence before me, I am unable to conclude that employees who remained at TST suffered a significant adverse effect due to the establishment of the Aldershot Terminal. Similarly, employees who went from TST to the Aldershot Terminal suffered no significant adverse effect. In short, the Union has identified no significant monetary or non-monetary adverse effect on employees, resulting from the change of home stations with the establishment of the new Aldershot Terminal.

38. For these reasons, I find that the establishment of the Aldershot Terminal did not constitute a material change under Article 79.1 of collective agreement 4.16, and therefore did not trigger the related obligations for the Company.

39. The grievance is dismissed.

October 11, 2022



JOHANNE CAVÉ

ARBITRATOR