CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 4862

Heard in Montreal, September 12, 2023

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Remedy Grievance on behalf of all Conductors in the Western Region, specifically those named below from Prince George, BC, regarding the Company's failure to provide a lead locomotive with a microwave oven, as stipulated in Addendum 63 and Article 47 of Agreement 4.3.

THE UNION'S EXPARTE STATEMENT OF ISSUE:

For the period of August 1 to August 31, 2019, multiple conductors (the Grievors) of Prince George, BC, were required to operate trains with lead locomotives not properly equipped with microwave ovens as cited in the Step II grievance.

It is the Union's position that the Company has failed to provide the Grievors with locomotives that met the standards as outlined in the collective agreement. The Grievors trains were not cross boarder trains and were required to be outfitted with the proper cooking appliances or be replaced by a Company locomotive that contained a microwave oven. There were multiple locations and opportunities for the Company to address the issue prior to the Grievor's tours of duty. There are no provisions, outside of cross boarder trains, that would allow the Company to negate the cited provisions regardless of the entering into any agreement with other carriers; the Agreement only contemplates the specifics of cross boarder trains to operate to specific terminals prior to being required to implement the agreed upon cooking appliances.

The Union requests a cease and desist be issued compelling the Company to adhere to the cooking appliance provisions of the collective agreement, and a remedy be afforded to the Grievor, be applicable to like grievances, and be applicable to future violations akin the instant dispute.

It is the Company's position that the Grievors locomotives were not owned by CN. A Co-Production Agreement between CN and CP Rail commenced in March 2006. This agreement allowed for the handling of the other parties' trains. Since 2006 CN crews have handled numerous trains solely with CP power, without a lead locomotive containing a microwave oven. The cooking appliance requirements are not applicable, in any capacity, to the instant matter.

FOR THE UNION:
(SGD.) R. Donegan
General Chairperson, CTY W

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

R. Singh	– Manager Labour Relations
F. Daignault	– Director Labour Relations

And on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
J. Thorbjorsen	– Senior Vice General Chair, CTY-W, Saskatchewan
M. Anderson	– Vice General Chairperson, Edmonton
M. Sinclair	– Vice General Chairperson, Prince George
P. Boucher	– President, TCRC, Ottawa
R. Finnson	– Vice President, TCRC, Ottawa

AWARD OF THE ARBITRATOR

Summary

[1] This is a contract interpretation grievance. At issue is the interpretation of Articles 47.3, 47.4 and Addendum 63 of Agreement 4.3. The Grievance involves the question of whether trains operated without a CN locomotive must contain microwaves in the lead unit.

[2] For the reasons which follow, the Grievance is dismissed. Only trains which have a CN locomotive as the lead unit must be equipped with an operational Microwave. Any other interpretation would render the wording of Article 47.3 superfluous and meaningless.

Analysis & Decision

Facts and Issue

[3] The facts are straightforward and not in dispute. Prior to the negotiation of Article 47, train crews would stop the trains in order to eat. This was not disputed by the Company and is referenced in Article 47.

[4] Articles 47.2, 47.3, and 47.4 state:

> **Through Freight Service**
>
> 47.2 Trains will not be delayed nor train operations disrupted solely as a result of stopping the train to eat. Employees will report for work suitably prepared for a tour of duty recognizing that the opportunity to take a meal will be governed by the practicality of train operations.
>
> 47.3 All train consists with CN Locomotive Power will contain an operational Microwave in the lead unit.

> 47.4 A cross border train consist without CN power will obtain a properly equipped lead locomotive at the first locomotive power facility (Toronto, Montreal, Chicago (Woodcrest), Winnipeg and Vancouver). All other trains will contain an operational Microwave in the lead unit.

Addendum 63 is dated May 5, 1995 and states:

> During negotiations which culminated in an agreement in Toronto in May 1995, there was some discussion on the conditions of locomotive cabs.
>
> …
>
> One of the Council's demands during the current round of negotiations concerned the provision of a microwave oven on all road locomotives. It is our intention to order all new road locomotives and equip the existing road fleet with microwave ovens. Except for some locomotives that will be phased out in the next several years, all road locomotives will be equipped with a microwave oven by May 5, 1997. In the interim, when a locomotive consist has a unit equipped with a microwave oven it will be dispatched in the lead position when practicable.

[5] This Grievance arose as the result of an agreement signed between CP and CN in 2006 – after the negotiation of Article 47 - which allowed both CP and CN to handle each other's trains. It is not usual for CP locomotives to be equipped with a microwave.

[6] CN has been running 741/740 trains on CN lines using CP locomotives. 741 trains are interchanged to CN at Kamloops from CP lines. These are not cross-border trains. The Company has put out a bulletin to its employees that these locomotives would not have microwaves and to be prepared for that reality when working on these trains.

[7] The Union filed this Grievance on September 5, 2019, claiming that certain of its personnel were operating a consist between Prince George and Kamloops, B.C., that had a lead locomotive that was not equipped with a microwave. In those consists, there was no CN Locomotive Power anywhere in the consist. The Locomotive was a CP Locomotive.

[8] Both parties presented argument on the proper interpretation of these articles. The Union noted the second sentence of Article 47.4 stated "all other trains will contain an operational Microwave in the lead unit" and that this language governed. It argued this language was capable of a literal, straightforward interpretation and required the Company to provide locomotives "equipped with microwave ovens on *all trains* operating in road service", which included the trains in this dispute. It argued that the obligation on

cross-border trains to be properly equipped at the first locomotive power facility (the first sentence of Article 47.3) confirmed this obligation and that the wording of Addendum 63 and Article 47.4 was mandatory. It urged a cease and desist order should issue, as well as a remedy payment, for this contravention.

[9] The Company argued it had complied with its obligations. It argued the words "*with CN Locomotive Power*" in Article 47.3 must be given meaning: If there is no CN Locomotive Power within the consist, there is no obligation to have an operational Microwave in the lead unit. There was no CN Power in this consist, so no requirement for an operational Microwave in the lead unit. It further argued it was not "practicable" to equip the 741/740 trains with CN power, as those trains did not pass through any locomotive power facility, such as those mentioned in Article 47.4 and the interchange from CP lines to CN lines does not occur in the yard, making it even more difficult to implement the switching of power.

Decision

[10] When interpreting a collective agreement, an arbitrator is required to follow what is termed the "modern principle" of interpretation. This principle applies to both federal and provincial industries. This principle was adopted by the Supreme Court in 1998 in *Re Rizzo & Rizzo Shoes Ltd.*[1] The modern principle requires that the words of a contract are to be read in their entire context and in their grammatical and ordinary sense (sometimes referred to as their "plain and ordinary meaning"), harmoniously with the scheme of the contract (the provisions as a whole), the object of the contract (the ends to be achieved) and the intention of the authors (the words used).

[11] The impact of more recent authority from the Supreme Court of Canada[2] and the Alberta Court of Appeal[3] on this principle was recently summarized by this arbitrator in *AUPE v. AHS (Named Holiday Grievance)*[4]. The Alberta Court of Appeal provided a helpful discussion of the Supreme Court's direction, specific to collective agreement interpretation in *AUPE v. AHS*. Surrounding circumstances – which are background facts,

[1] 1998 CanLII 837
[2] In *Sattva Capital Corp. v. Creston Moly Corp.* 2014 SCC 53
[3] *AUPE v. AHS* 2020 ABCA 4
[4] 2022 CanLII 22226

relevant and uncontroversial, known to the parties at the time they entered the contract, and "capable of affecting how a reasonable person would understand the language of the document"[5] are relevant. An important clarification is that the parties' subjections intentions about meaning that do not qualify as surrounding circumstances – such as why a particular clause was introduced, or what issue it was meant to address, for example – are irrelevant. Rather, the task of an arbitrator is to determine the parties' objective intent from the words they chose to use to confirm their deal. There are several "canons of construction" or "rules" of interpretation which arbitrators bring to bear in accomplishing this task, which will be noted in this analysis.

[12] As the Union noted, these are sophisticated parties in a mature bargaining relationship. At issue in this Grievance is not just the wording of the collective agreement, but also an Addendum from 1995, which references those negotiations.

[13] The Union's argument reduces to a requirement that – if CN employees are operating a locomotive – it must have an operational Microwave – or be switched out for one with an operational microwave – regardless of whether that locomotive is owned by CN. In this analysis, the requirement for an operational Microwave is tied to the *employee,* rather than to the *locomotive.* It has relied on the second sentence of Article 47.4 to support this argument – "all other trains will contain an operational Microwave in the lead unit".

[14] I cannot agree that Article 47.4 applies to this situation. I agree with the Company that Article 47.4 is specific in application to cross-border trains. The train at issue in this case is not such a train.

[15] Words take association from where they are located and placement of words is relevant. The issue of cross border trains was separated by the parties into a separate article. I am satisfied there are cross border trains which *have* CN Locomotive Power when they cross the border – and those that do not. The Article speaks to both those situations, in the first and second sentences. Those which do not have CN power when crossing the border must obtain that power at the "first locomotive power facility" (under

[5] AUPE v. AHS, at para. 25.

the first sentence) and “all other trains” – being cross-border trains which *do* have CN power when they cross the border – are required to have an operational Microwave, (under the second sentence). The second sentence relates to the first. This interpretation allows this provision to be read harmoniously with the interpretation of Article 47.3, outlined below.

[16] If the Union’s interpretation is correct that the second sentence of Article 47.4 is applicable and requires “all trains” to have operational Microwaves, that would make Article 47.3 unnecessary and superfluous. Such an interpretation is not to be preferred.

[17] Addendum 63 is dated but provides context as a surrounding circumstance. The relevant background facts from that Addendum which are undisputed and known to both parties are that CN intended to outfit all of its locomotives with Microwaves, and that “In the interim” – i.e. while that process was ongoing – it would where practical dispatch the locomotives which *did* have microwaves to the lead unit.

[18] It was not clear from the evidence if that process is now complete. However, on a plain and ordinary reading of Article 47.3, since the Company has agreed with the mandatory obligation to have an operational Microwave on “all train consists with CN Locomotive Power”, it may well be this process is now complete.

[19] Turning to Article 47.3. It is one sentence. It states “All train consists with CN Locomotive Power will contain an operational Microwave in the lead unit”. The parties were alert to the fact that other than CN Locomotive Power may be used on a train. This is evidence in Article 47.4. The parties could have – but did not – state that “all trains will contain an operational Microwave”. That is the result the Union seeks. The distinction of a train consist “with CN Locomotive Power” which is included in Article 47.3 is specific.

[20] Giving Article 47.3 a plain and ordinary meaning - and reading it consistently with the context provided by Addendum 63 and harmoniously with Article 47.4 - I am satisfied it reflects an objective intention of the parties to provide operational Microwaves *when a train consist has CN Locomotive Power in the lead unit position.* This interpretation is consistent with Addendum 63, where the Company indicated its intention to outfit all of its (CN’s) locomotives with Microwaves, and – in the meantime – *to dispatch such a locomotive in the lead unit*, “when practicable”. I am satisfied the intention was that all

lead *CN locomotives* would have an operational Microwave. I do not read Article 47 as setting out any obligation that CN can *only* use its own locomotives in that position, or that it must switch out for its own locomotives at the first opportunity, so microwaves are always available to its employees riding the lead unit. Article 47.3 does not stretch that far.

[21] In this case, CP power was the only locomotive power in this train consist. The obligation in Article 47.3 for an operational Microwave was not triggered when the consist was not one "with CN Locomotive Power".

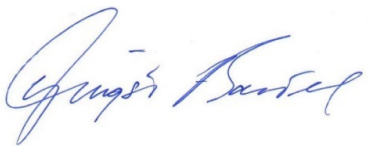
[22] It is recognized that Article 47 was negotiated prior to the 2006 Agreement made between CN and CP that resulted in the use of CP locomotives. It may be that the use of third party locomotives has increased and that the Union wishes to revisit this Article. However, any change needs to be negotiated at the bargaining table, rather than gained at arbitration. There is no jurisdiction in an arbitrator to amend the collective agreement in the manner the Union seeks.

Conclusion

[23] The Grievance is dismissed.

[24] The Company is not required to provide operational Microwaves when train consists have locomotives other than CN locomotives in the lead unit.

[25] The Company's obligation to provide an operational Microwave is limited to those consists where CN Locomotive Power is in the lead unit.



December 1, 2023

CHERYL YINGST BARTEL
ARBITRATOR