CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 4863

Heard in Edmonton, September 12, 2023

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the Company's declination of a 'called and cancelled' claim of 50 miles to Locomotive Engineer D. Thorn of Jasper, AB.

THE UNION'S EXPARTE STATEMENT OF ISSUE:

On July 22, 2018 the grievor was called for train X118 in straightaway freight service from Jasper to Edson, AB. When the grievor reported for work at the Jasper terminal he was informed that he would be deadheaded by taxi to MP 2.50 on the Albreda Subdivision to take charge of his train. He then operated his train eastward through Jasper and on to Edson, via the Edson West Subdivision.

Union Position

The Union's position is that the Company failed to adhere to Article 65.3 of the Collective Agreement when it changed the route that the train was originally designated to operate over when he arrived at his reporting location. As a result of the change in the route operated on, the Union asserts that Mr. Thom is entitled to a called and cancelled payment when he was issued a new call at the time that he reported for work.

Company Position

The Company contends it has properly applied Article 65.3. The grievor's destination and class of service were not changed. The decision to have the griever reach out, take control of his train and proceed to his final destination does not constitute a change of call, nor did the Company cancel the grievor on the tour of duty in question.

FOR THE UNION:
(SGD.) K.C. James
General Chairperson, LE W

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

A. Bacchus	– Manager Labour Relations,
F. Daignault	– Director Labour Relations, Montreal
S. Fusco	– Senior Manager Labour Relations, Toronto
K. Blair	– Senior Manager Crew Management,

And on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
K.C. James	– General Chairperson, LE-W, Edmonton
T. Russett	– Vice General Chairperson, LE-W, Edmonton
P. Boucher	– President, TCRC, Ottawa
R. Finnson	– Vice President, TCRC, Ottawa

AWARD OF THE ARBITRATOR

Background and Issue

[1] It is not unusual in this industry to find a train stopped short of a particular place from where the next crew is scheduled to begin their tour of duty. This can occur for various reasons, such as breakdowns, or the previous crew reaching the limits of their available work hours under work/rest regulations and so needing to stop short.

[2] When this occurs, the crew next scheduled to operate the train must then be transported – or "deadheaded" – to where the train was left, to "pick up" the train at that point and operate it from that location forward, moving through the train's originally scheduled stop. This is known in the industry as "reaching out" for a train.

[3] This situation occurred for this Grievor on July 22, 2018. On that day, the Grievor stood "first out" on the Edson West Pool. He was called for straightaway freight service (a type of Road Service) from Jasper to Edson. Straightaway service runs in one direction. When the Grievor reached Jasper to begin his tour of duty, he was told he would be deadheaded by taxi to a point approximately 2.5 miles west of Jasper, to take charge of his train.

[4] The Grievor "deadheaded" to the train, then operated his train eastward from that point, through Jasper and on to Edson. For this entire trip the train was moving east. As the Grievor considered the Company had changed his route after he accepted his call for service and gone on duty by requiring he "reach out" for the train, he submitted a stand-alone claim requesting a 50 mile called and cancelled payment, under Article 66. That claim was denied.

[5] The question to be resolved in this Grievance is: Did the Company breach the Article 65.3 notification provisions by changing the "route" of the train after the

Grievor's call, entitling the Grievor to notification of the original "route" to "reach out" for the train and/or a "called and cancelled" payment for the change of the route from Jasper to Edson, and a new "route" from "Jasper to Edson via Wynd"?

[6] For the reasons which follow, the Company did not breach the notification provisions of Article 65.3. The Grievance is denied.

Collective Agreement Provisions

[7] This is not an isolated issue in this industry. The Union noted this case was representative of over 800 similar grievances involving various "reach out" distances. Some context is required for this issue.

[8] Locomotive Engineers (LE) who work in unassigned "pools" and are in position to accept calls for service are governed by Article 65, which is titled "Calling". LE's receive a two hour "call", "as far as practicable", except in case of emergency: Article 65.1. Article 65.2 refers to runs which are ordered for the same time, and the relative standing between LE's from the same pool who are traveling on the same train, but one is deadheading to the away from home terminal.

[9] It is the final sub-article, Article 65.3, which is is at the heart of this dispute (the disputed language is emphasized):

> Locomotive engineers will be notified when called whether for straight-away or turnaround service and will be compensated accordingly. They will also be notified of the route over which the train is expected to operate if there is more than one route over which the train can operate to reach the objective terminal. Such notification will not be changed unless necessitated by circumstances which could not be foreseen at time of call, such as accident, locomotive failure, washout, snow blockade or where the line is blocked (emphasis added).

[10] Article 66 states:

> 66.1 A locomotive engineer cancelled, after accepting a call for service will be paid 50 miles at the minimum rate applicable to the service for which called. A locomotive engineer held for a period exceeding 4 hours will be paid 12-1/2 miles per hour for class of service for all time held.
>
> 66.2 A locomotive engineer cancelled after leaving the shop track designated track or departing in a crew van or taxi will be paid 100 miles at the graduated rate applicable to the service called for and will retain his previous standing on the board.

> 66.3 Locomotive engineers who report for duty and are afterwards cancelled, will have the right to book up to 8 hours rest at the home terminal and up to 6 hours rest at other terminals without losing their turn.

[11] The Union also argued Article 32.10 is relevant. That Article states:

> When it becomes necessary to relieve a pool locomotive engineer en route, such locomotive engineer will be relieved by another pool locomotive engineer, except as provided in Article 61.6.

Arguments

[12] The Union argued that the Company was in breach of the notification provisions of Article 65.3, as the Grievor was not notified of the change to his job parameters until *after* he reported for duty. It argued he was required to be notified of the "change" in the job assignment *before* commencing duty. The Union argued that when LE's are required to reach out to pick up a train, their original route should therefore be considered as "cancelled" under Article 66, as "reaching out" to pick up a train resulted in a "new route". Therefore, the "called and cancelled" payment applied. It argued this was the case, regardless of how long it took to reach out for that train, or how many miles the train was from the station. The Union argued Article 32 governed when a LE needed to be relieved.

[13] It was the Union's position the provision existed to allow LE's to determine which call to take if two trains are called at the same time, to ensure they are prepared to do the work of the route they work, and to put limits on the Company's ability to make changes to the route once an employee is called to work.

[14] It also argued that the route information was a "standard", and as such it should only be departed from in exceptional circumstances, which did not exist in this case; that the language of Article 65.3 is distinct from the language used in Agreement 4.3 (governing Conductor service), because it is LE's and not Conductors who must be familiar with the route over which they operate; that the Company provided no legitimate justification for its deviation from its obligations in this case and that the only latitude the Company had was *prior* to the time of call. It also argued the Company breached Article 65.3 as the Grievor was only notified he would be operating on the Edson subdivision, between Jasper and Edson, while the "reach

out" took onto the Albreda Subdivision. The Union noted the Company's jurisprudence pre-dated the current language. The Union argued that it was Article 32.1 which applied for relieving LE's en route.

[15] For its part, the Company argued the language of Article 65.3 did not support the Union's position. It argued the Union was trying to achieve in arbitration what it could not achieve in bargaining by having this Arbitrator amend the collective agreement. It argued that under a plain and ordinary reading of the language, there was no provision which obligated the Company to compensate an employee with a "called and cancelled" payment when the employee performed the work he had been called to do. It argued the Grievor's assignment was not "cancelled", as a "change" in an assignment was not the "cancelling" of an assignment. Further, the change was small – 2.5 miles – which resulted when the inbound crew ran out of time. It argued the practice of "fresh" crews reaching out to pick up trains goes back many decades. It noted the Grievor was compensated at the applicable rates for the 2.5 miles he reached out.

[16] It also argued that notice was required "if and only if" there was more than one route and then only for the "expected" route, which implied it could be changed. It noted there was only one route between Jasper and Edson.

[17] The Company further argued that - even if notice were required - the inbound crew running out of hours would be a circumstance which could not be foreseen. It pointed out that Article 61.6(c) stipulates how crews can be called to rescue extended run trains, and that there is no similar language for single sub trains.

Analysis and Decision

[18] This is a contract interpretation grievance. This Arbitrator has written extensively on the principles to be applied and that analysis need not be repeated in detail here[1]. To summarize, the exercise in such a grievance is to find the *objective* intentions of the parties, from the words they used to ink their deal. To get to that meaning, the "modern" principle of interpretation requires consideration of the "plain and ordinary"

[1] See a summary of applicable principles in *AUPE v. AHS (Named Holiday Grievance)* 2022 CanLII 22226

meaning of the words used. Arbitrators assume that every word or phrase was placed for a purpose. Dictionary definitions are appropriately used to determine meaning (unless another, specialized meaning is evident). Precedents are of limited use, unless those precedents have interpreted the same language.

[19] While this industry is unique and the relationship long-standing; and while an understanding of how this industry operates is important in interpreting the applicable collective agreements; there are important limitations to *how* the history between the parties can be used to interpret the current collective agreement. As was recently noted by the Alberta Court of Appeal, the *subjective* intentions of the parties of why a particular provision was amended in bargaining, or why words were added or deleted – are never admissible, as such intentions are never relevant to determining the parties' *objective* intentions – which is determined from the language they chose[2].

[20] Under Agreement 1.2, Locomotive Engineers (LE's) work in "pools". They are subject to a "call" to work. I cannot agree with the Union that Article 32.1 is relevant to this interpretative exercise. This was not a case where an LE was required to be "relieved". The tour of duty of the previous crew "ended" and the train was left on the track. It was the train that needed to be "reached out" for; the LE did not need to be "relieved"; that individual had finished his tour of duty.

[21] Reading Article 65.3, I am satisfied the Company is to provide two pieces of information to LE's at the time of that call: The first is the "type" of service - as between straightaway and turnaround. The second is the "route".

[22] Putting aside for a moment the meaning of the term "route", I agree with the Company that Article 65.3 limits the situations in which this "route" information is required to be given at time of call. Article 65.3 states that the employee is to be told of the "route" at the time of call, "**if**" there was "*more than one route over which the train is expected to operate".* The Union argued that "if" did not mean "if and only if". However, I find I cannot agree; that is what it *does* mean, according to the

[2] *AUPE v. AHS* 2020 ABCA 4 at para. 27

Merriam Webster Dictionary. It defines "if" as "in the event that"; "on condition that"; and "on the assumption that". All three of those definitions mean "if and only if".

[23] If that "route" information was required in *every* case, the word "if" would be unnecessary and superfluous. An interpretation which renders a word or words superfluous is not one which is preferred by an arbitrator. Rather, I interpret the word "if" consistent with its defined meaning, which is to import a requirement that the Company need provide notice of the "route" **if** there is more than one "route" possibility. This then raises the question of what is meant by the term "route".

[24] The term "route is not defined in Agreement 1.2. I accept that the plain and ordinary meaning of the word "route" is as defined in the Merriam Webster Dictionary. That definition is "a traveled way". The Cambridge Dictionary defines it as "a particular way from one place to another, especially the way that a bus, train, plane, etc. travels regularly". I am satisfied a "route" implies a degree of *regularity* in its travel.

[25] Applying that meaning to this clause, the "route" between Jasper and Edson is a "traveled way" – the way the train travels regularly. I am prepared to find that there was only one "route" that could have been used between Jasper and Edson as that word is used in Article 65.3 and as the evidence established. I am satisfied that a "reach out" did not result in multiple "regular" possibilities for traveling between Jasper and Edson.

[26] The latter half of the emphasized words in Article 65.3 state it is the route "*over which the train can operate to reach an objective terminal*" that requires notification, if changed after the call. While the Union has argued the train traveled from "Jasper to Edson via Wynd", this is not correct. It is not the case that the train must detour to Wynd in order to reach Edson from Jasper on its "route". The train did not go from "Jasper to Wynd then to Edson" as that would imply. I am satisfied it is the "traveled way" between Jasper and Edson – the "route" the train travels to reach that next terminal - that the Company called the Grievor to work. I therefore cannot agree with the Union that the need to "reach out" to pick up a train qualifies as changing the "route" as was argued.

[27] This case is distinguishable from **CROA 2800** where the Grievor was told his train was cancelled. In this case, the Company did not communicate to the Grievor that a route was "cancelled". The train did travel between Jasper and Edson.

[28] The Union also argued that it was the movement into a new subdivision for the train that created a new "route". However, there is no language in Article 65.3 which would support that intention.

[29] The word "subdivision" is not used anywhere in Article 65.3. To interpret Article 65.3 as the Union suggests would "read in" an obligation on the Company to limit a "route" worked by an LE to a particular subdivision. That limitation is one that must be gained at the bargaining table. An Arbitrator from this Office does not have jurisdiction to add words to a collective agreement.[3]

Conclusion

[30] The Company did not breach the notification provisions of Article 65.3.The Grievance is denied.

[31] I retain jurisdiction to address any questions regarding the implementation of this Award, and to correct any errors or omissions to give it the intended effect.

December 13, 2023

CHERYL YINGST BARTEL
ARBITRATOR

[3] Memorandum of Agreement Establishing the Canadian Railway Office of Arbitration & Dispute Resolution, as amended; Item 14