CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 4884

Heard in Calgary, November 15, 2023

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Remedy and Policy grievance on behalf of all Conductors in Western Canada, and specifically Conductor K. Robbins of Vancouver, BC, concerning the violation of Article 83A of Agreement 4.3 and The Questions and Answers provided to the Union by the Company regarding Conductor Only Operations.

THE UNION'S EXPARTE STATEMENT OF ISSUE:

On July 18, 2021, Conductor Robbins (the Grievor) was called for service on the 2355 Conductor Only (Yard) Transfer, assignment YTTS60. During the tour of duty, the Grievor was given instructions to pick up a single car (buffer) from PF14. He was then required to double PF15 (17 cars, 978') back to PF14 (26 cars, 1260') totaling 2992'.

It is the Unions position that the Grievors transfer fit in either PF14 or PF15 and the work required by the Grievor was in violation of Article 83A. Multiple double overs may be required in the assembly of a yard transfer, however, the track(s) must be filled to their capacity and set prior to such transfer assembly.

The Conductor/Yard Foreman Only Agreement, signed January 15, 1992, dictates how Conductor only operations will be performed. Clause 3.1 (2)(b)(c), specifically question five, the question is asked "*Does the doubling over of a train or transfer into the minimum number of tracks, […] constitute switching?"* The response accepts that the requirement of minimum number of tracks is applicable to Conductor Only (Yard) assignments.

It is the Company's position that the work performed by Conductor Robbins was in accordance with Article 83A as the "minimum number of tracks" rule is only applicable to road service employees.

FOR THE UNION:	**FOR THE COMPANY:**
(SGD.) R. S. Donegan	**(SGD.)**
General Chairperson, CTY-W	

There appeared on behalf of the Company:

R. K. Singh	– Labour Relations Manager, Vancouver
D. Jansen	– Transportation Manager, Vancouver
S. Fusco	– Senior Manager, Labour Relations, Edmonton
M. Ikram	– Labour Relations Manager, Edmonton

And on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
R. S. Donegan	– General Chairperson, CTY-W, Saskatoon
J. W. Thorbjornsen	– Vice General Chairperson, CTY-W, Saskatoon
M. Anderson	– Vice General Chairperson, Edmonton

AWARD OF THE ARBITRATOR

Background, Issue and Summary

[1] This Grievance was framed as a Grievance seeking a remedy for the Grievor, who is a Conductor based in Vancouver, B.C. It was also framed as a Policy Grievance "on behalf of all Conductors in Western Canada".

[2] The Grievance places in issue the Conductor Only provisions contained in Article 83A.1 of Agreement 4.3.

[3] This is the second Grievance[1] heard during the November CROA session which raised issue with the Conductor Only provisions of Agreement 4.3 as it relates to Yard service. The Union adopted its submissions from **CROA 4883** in arguing this dispute.

[4] There is no dispute that Conductor Only work is work performed by a reduced crew, compared to how work has historically been performed, and that Article 83A.1 sets out when that type of crew can be used.

[5] While the issue in **CROA 4883** related to remedy, the issue in this Grievance is

i. whether the work assigned to the Grievor on July 18, 2021 breached the limitations set out Article 83A.1.

[6] For the reasons which follow, the Grievance is dismissed. The doubling work and switching work assigned to the Grievor did not breach the limitations set out in Article 83A.1.

[1] The second Grievance was resolved in **CROA 4883**

Facts

*Background Facts from **CROA 4883***

[6] The following background information from **CROA 4883** is also relevant to this Grievance[2]:

> I am satisfied the assignment of "Conductor Only" work is a contentious issue between the parties. The Union has stated that it has approximately 580 grievances filed which relate to the assignment of work that it alleges does not meet the requirements of the Conductor Only provisions.
>
> Some historical background is relevant to determining the appropriate remedy.
>
> The parties are sophisticated and are in a mature bargaining relationship, spanning many decades. As between these parties, there are distinct collective agreements which govern the work of Conductors in the various regions of Canada. Agreement 4.3 applies in Western Canada. It is a lengthy and detailed document.
>
> The parties are also signatories to the Agreement which formed the CROA Office[3] in 1965, as amended. This Office has produced jurisprudence over multiple decades relating to this industry. That jurisprudence provides both persuasive precedent and historical background.
>
> Historically, trains were operated by a crew consist of a locomotive engineer, a conductor and up to two other employees. Technological innovations led to the negotiation of provisions which allowed crews to perform certain work with just a Locomotive Engineer and a Conductor. These were called "Conductor Only" crews and w were smaller crew consists.
>
> The relevant agreement relating to Western Canada was negotiated as a stand-alone agreement in January of 1992 (the "Western Conductor Only Agreement"). Appended to that Agreement, were several letters from the Company clarifying how certain provisions would be interpreted. There were different provisions negotiated for employees working in "Conductor Only" roles in "road service"[4] and those working in "yard service". There were also regional differences. Over time, the provisions which impacted Conductors working in "yard" service were integrated into Article 83A of Agreement 4.3.
>
> As this was a significant change in this industry, not unexpectedly disputes arose between the parties regarding how these provisions were to be interpreted. As the Union noted, much of the precedents addressing this issue arises from the use of Conductor Only crews in road service, rather than yard service.

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[2] Beginning at para. 16

[3] Most recently amended in November 2023.

[4] Governed by Article 15.2

Collective Agreement Provisions

Article 83A.1:

Notwithstanding the provisions of Article 82 and 83, yard transfers may be operated with a conductor (yard) but without an assistant conductor provided that:

(a) Such transfer movements are operated without a caboose

(b) At the originating yard or interchange, doubling is limited to that necessary to assemble the transfer movement for departure;

(c) At the destination yard or interchange, doubling is limited to that necessary to store the transfer movement upon arrival.

(d) **Switching** required for conductor (yard) only transfer **will be limited to that necessary** to meet the marshalling requirement, remove any mis-routed cars or set out bad order cars.

(e) Such transfer movements will make no more than two stops en route, in any one direction, between the originating and destination yards or interchanges for the purpose of takin on and/or setting out a car or group of cars together;

(f) Such transfer movements are not required to perform switching en route (i.e. between the originating and destination yards or interchanges) except as may be required in connection with the taking on or setting out of cars as, for example, to comply with the requirements of rules and special instructions which govern marshalling.

[emphasis added]

Article 15.2:

Notwithstanding the provisions of sub-paragraph 15.2(a), trains operating in through freight service may be operated with a conductor but without an assistant conductor provided that

(i) Such trains are operated without a caboose.

At Terminals

(ii) At the initial terminal, doubling is limited to that necessary to assemble the train for departure account yard tracks being of insufficient length to hold the fully assembled train.

(iii) At the final terminal, doubling is limited to that necessary to hold the train upon arrival account yard tracks being of insufficient length to hold the train.

(iv) If switching in connection with their own train is required at the initial or final terminal **to meet the requirements of the service** (except to set off a bad order car or cars or lift a bad order car or cars after being repaired), the conductor will be entitled to a payment of 12 – ½ miles in addition to all other earnings for the tour of duty. An employee can be required to spot the working portion of the pads, regardless of the length of the tracks. When spotting the pad tracks, doubling is limited to that necessary due to insufficient room on the working pad. The conductor will be entitled to 12 ½ miles.

…

[emphasis added]

Article 121.10

Article 121.10 When it is agreed between the Company and the General Chairperson of the Union that the reasonable intent of application of the Collective Agreement has been violated an agreed to remedy shall apply…The precise agreed to remedy, when applicable, will be agreed upon between the Company and the General Chairperson on a case-by-case basis….*In the event an agreement cannot be reached between the Company and the General Chairperson as to the reasonable intent of application of the Collective Agreement and/or the necessary remedy to be applied the mater may within 60 calendar days be referred to an Arbitrator as outlined in the Collective Agreement* [emphasis added]

Note: A remedy is a deterrent against collective Agreement violations. The intent is that the Collective Agreement and the provisions as contained therein are reasonable and practicable and provide operating flexibility. An agreed to remedy is intended to ensure the continued correct application of the Collective Agreement.

Excerpt from the Greater Vancouver Operating Manual

Section 6.0 Marshalling

Note 2: Unless relieved by follower line on WOPRT/Switch lists (e.g. no marshaling required UN/NA 2448 Molten Sulphur), these marshalling restrictions apply to all placarded cars (loads and residues) on movements which will exceed 15 MPH.

(a) General Restrictions – Any placarded dangerous goods car must not be marshalled next to:

- an operating locomotive; (unless all cars in the train have a placard)
- any occupied car; (unless all cars in the train have a placard)
- a car equipped with a heating or cooling device that has a source of ignition;
- any open top car;
  - i. when the lading protrudes beyond the car and may shift during transport, or
  - ii. when the lading is higher than the top of the car and may shift during transport

Canadian Railway Operating Rules (CROR)

"Transfer" An engine with or without cars operating on main track at speeds not exceeding 15 MPH

The Grievor's Assignment

[7] On July 18, 2021, the Grievor was given assignment YTTS60 to assemble a transfer in Thornton Yard before departing for McLean Yard. He was required to first take a single car from the west end of track PF14 to use as a buffer, then couple onto track PF15 (17 cars), and then "double back" to track PF14 to couple onto the remaining cars in that track (26 cars).

[8] The assembled length of this transfer was then 2,992 feet. Track PF14 had room for 4,965 feet, and Track PF15 was 5,155 feet long. The Company provided documents to establish that the cars in both tracks PF14 and PF15 carried dangerous goods.

[9] Both parties provided visuals of the work performed by the Grievor, which were helpful in understanding this work.

[10] I am satisfied from further evidence requested from the parties that in order to operate from Thornton Yard to McLean Yard, the movement would pass through Lynn Creek and also that the transfer between Thornton Yard and McLean was operating on the New Westminster subdivision.

Arguments

[11] The Union bears the burden to establish the breach it has alleged.

[12] The Union urged this Grievance is a part of a larger, systemic issue. It argued the Grievor was required to perform unnecessary switching and doubling, in violation of Article 83A.1:

i. the restrictions for doubling over were not limited that that which was necessary": Article 83A.1(b);

ii. the switching moves the Grievor was required to make to put the "buffer car" in place, which violated Article 83A.1(d); and

[13] Its position was that both Article 83A.1 and Article 15 were designed to minimize the switching work that is required when a Conductor is working in a reduced crew consist as a "Conductor Only", given the concession by the Union in allowing such work. While it recognized the majority of the case law related to the road service

provisions, it argued the principles were fundamental and also applied to Yard service.

[14] It was the Union's position that both articles are restrictive and that the word "necessary" must be given meaning. It argued that arbitrators had taken a restrictive approach to the application of the Conductor Only provisions. Its position was the Company was required to demonstrate reasons "beyond mere operational convenience".

[15] The Union argued that at the very least, the Company must have a meaningful reason for the doubling-over. It noted the Company offered no explanation for why the transfer movement in this case had to be doubled-over. The Union noted the entire track movement could have been comfortably accommodated in either track, eliminating any need for a double-over.

[16] In its Reply Brief, the Union emphasized that the Company could have assembled an entire transfer with a buffer car first, as the buffer car was already at the head end of track PF14. If such a buffer car was needed for this transfer, the Grievor could have taken all of track PF14 – with the buffer car first – and double over to track PF15. It noted there was a significant advantage gained by the Company in having one employee perform work versus a full crew consist as was historically the case.

[17] Regarding switching, the Union argued there was no marshalling requirement which applied to the Grievor's yard transfer movement, so there was no need to make the switching moves. It argued the "only conceivable purpose of the switching moves was to marshal these blocks of cars in a specific order for the benefit of some other train or yard movement. It argued that kind of switching is explicitly not allowed for a conductor-only yard crew".

[18] The Union relied on **AH583** and **AH606**.

[19] The Company argued there was no violation of the collective agreement. It argued the work performed in this case was in relation to the Grievor's own transfer movement. It noted the language was clear and concise. It pointed out that

Conductor Only (Road; Article 15.2) and Conductor Only (Yard; Article 83A) were negotiated by the parties as different provisions, and that those differences had to be given meaning. It argued that the Western Conductor Only Agreement and the clarifications provided in Question and Answers 5, 6; and 21 support its interpretation that yard transfers *can* be assembled by Conductor Only crews who double over from more than two tracks.

[20] The Company also argued that the cars in PF15 were in fact dangerous goods and as per the marshalling requirements, a buffer car was necessary. Further, it had met the requirement for "switching" as yard transfers were performed at track speed (in excess of 15MPH) "and therefore such yard transfers are subject to marshalling requirements". It noted this was part of the Greater Vancouver Operating Manual.

[21] The Company argued the Union had not met the threshold to seek a "cease and desist" order, which is an extraordinary form of relief.

[22] The Company relied on: **CROA 4078**; **AH795** and **AH801**.

Analysis and Decision

[23] The issue in this Grievance is the interpretation of Article 83A.1(b) and (d).

[24] The Union has argued the same fundamental principles should be applied from certain jurisprudence relating to road service Conductor-Only crews. Those crews are governed by Article 15.2. In negotiating that Article, the parties chose to use different wording for describing that work than the wording chosen for Article 83A.

[25] The parties are sophisticated. They are in a mature relationship which has spanned decades, in one of the oldest industries in this country. That industry is dynamic and has responded to various technological changes and advancements over the decades, to provide efficient and cost-effective service. A key and important component of that service is its workforce.

[26] The various agreements in this industry are lengthy and complex. The jurisprudence from this Office guiding that relationship began in 1965. An issue of contract interpretation is a common issue determined by this Office. Given the history of this

industry, many of the provisions often bear a rich historical background and have been included in the collective agreement through multiple bargaining rounds.

[27] The arguments seen at this Office are often developed – at least at first instance - by lay people who work diligently to provide the necessary evidence and jurisprudence. Their efforts are to be commended and are key to the success of this expedited process.

[28] It must be emphasized that contractual interpretation principles are the same whether the jurisdiction under which the industry operates is federal or provincial. While there is no *stare decisis* in labour arbitration, and arbitrators are not bound by the strict rules of evidence, arbitrators *are* bound by Court decisions.

[29] Given the clarification of the law in this area by both the Supreme Court of Canada and the recent guidance given at the Appellate level – and in view of the recent rejuvenation of this Office post-pandemic – I am satisfied this is an appropriate point to set out the principles and limitations which are relevant to contract interpretation. These principles are intended to guide the parties when pleading their cases.

Contract Interpretation Principles

[30] The principle that applies to contract interpretation – called the "modern principle of interpretation" – was first adopted by the Supreme Court in 1998[5], and further explained by that Court in 2014 in a decision which will be referred to as *Sattva*[6].

[31] While labour arbitrators have long considered the "factual matrix" or "context" when interpreting collective agreements, *Sattva* directed that *all* adjudicators must consider those circumstances when interpreting any kind of contract, as "…ascertaining contractual intention can be difficult when looking at words on their own, because words alone do not have an immutable or absolute meaning".[7] This effectively has brought contract interpretation in other areas in line with what labour

[5] *Re Rizzo & Rizzo Shoes Ltd.* [1998] 1 SCR 27
[6] *Sattva Capital Corp v. Creston Moly Corp.* 2014 SCC 53
[7] At para. 47.

arbitrators have historically done, as recognized by the Court of Appeal in *AUPE v. AHS.*[8]

[32] However, the limitations of *what type of facts* can be considered as "surrounding circumstances" - or part of the "factual matrix" - were also clarified by the Supreme Court. These facts must be:

i. "uncontroversial" to the parties;
ii. "known to the parties at the relevant time" [when the contract was negotiated] and
iii. "capable of affecting how a reasonable person would understand the language of the document"[9].

[33] The Alberta Court of Appeal recently applied the principles of *Sattva* to labour relations in *AUPE v. AHS*. It should be noted the panel of that Court included (now) Chief Justice Ritu Khullar, who was a well-respected labour practitioner in Alberta prior to her elevation.

[34] That Court summarized how the "modern principle" applies to collective agreement interpretation:

> Arbitrators apply general principles of contract interpretation, albeit to a specialized type of contract, the collective agreement. As such, they must discern the intention of the parties from the written words. But the words must be read in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme of the agreement and the intention of the parties… In some ways, labour arbitrators have already been following *Sattva's* directive to consider evidence of the surrounding circumstances of a contract. It is well established in labour law that labour arbitrators should consider evidence of the original and purpose of the collective agreement, the nature of the relationship created by it and the industry in which the parties are operating, when it considers the general context within which collective agreements are negotiated….it has been recognized that arbitrators should be aware of the labour relations context, and the elements of policy and statutory goals within which the collective agreement is formed…
>
> Other examples of what can be considered surrounding circumstances that labour arbitrators frequently consider include: prior arbitration awards, prior collective agreements, and the general bargaining context.[10]

[8] 2020 ABCA 4 at para. 39.
[9] At para. 25
[10] At paras. 37, 38.

[35] As had already been earlier noted by the Alberta Court of Appeal in *IFP Technologies (Canada) Inc. v. Encana Midstream Marketing*, (also interpreting *Sattva*), the goal of using surrounding circumstances is to "deepen the trial judge's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract".[11]

[36] While noting that the 'subjective intentions' of parties were never relevant, the Court of Appeal in *IFP* found these 'surrounding circumstances' could include facts regarding the "genesis, aim or purpose of the contract"; the "nature of the relationship created by the contract"; and the "nature or custom of the market or industry in which the contract was executed"[12]. However, in that same decision, the Court of Appeal also recognized "[i]t is true that evidence of negotiations is not itself admissible as part of the factual matrix.. Nor generally are prior drafts of an agreement…The Court did accept that evidence of negotiations is relevant insofar as that evidence *shows* the factual matrix, for example by helping to explain the genesis and aim of the contract".[13]

[37] In its later decision in *AUPE v. AHS*, the same Court provided further and key clarification for the meaning of the phrase "subjective intentions":

> The phrase "subjective intention" is often mentioned, but few cases explain its meaning. At the very least, it refers to a contract party giving direct evidence at a trial or an arbitration to the effect: 'I think that the phrase means X" or "at the time we entered into the contract, I thought the provisions meant Y"…. That type of evidence is always inadmissible to help interpret a contract. The concept "subjective intention" also includes indirect evidence about what a party thought the contract meant; for example, a party testifying that he or she proposed language in a draft agreement to resolve a specific problem – which it would resolve only if the language had a certain meaning..[14]

[38] In *AUPE v. AHS,* the Court held the arbitrator was unreasonable when he determined the meaning of a disputed phrase by considering the evidence of the parties' subjective intentions and then finding where those intentions overlapped.

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[11] *IFP Technologies (Canada) Inc. v. EnCana Midstream Marketing* 2017 ABCA 157 at para. 83
[12] *IFP* at para. 83
[13] At para. 85
[14] At para. 31

[39] The Court also explained *why* such evidence could not be used to interpret a contract:

> The reason subjective evidence is inadmissible is because it is irrelevant. Obviously, there would be no dispute if there was consensus on the intent, so the lack of consensus does not assist in interpretation. Also, to allow such evidence would be counterproductive to achieving bargaining consensus as it could lead to parties posturing to create a record for arbitration, rather than making best efforts to achieve consensus.[15]

[40] As can be appreciated, the Court's direction in *Sattva, IFP* and *AUPE v. AHS* confirms the limited use that can be made of bargaining evidence. Much of that evidence qualifies as subjective evidence of the parties' intentions. The reasoning also limits the use of "after the fact" statements made or exchanged about the meaning of a contract, which would also qualify as evidence of 'subjective intentions. The Court stated:

> Further, some discipline is required when considering evidence extrinsic to a contract. Not only are courts concern with such evidence 'overwhelming' the written words in a contract, but were are also concerned about overwhelming the hearing process with irrelevant extrinsic evidence.[16]

[41] These concerns are particularly acute in an expedited arbitration process such as that followed by this Office, where evidence is most often documentary and entered without objection; witness evidence is rare; and time is limited both for argument and for issuing decisions.

[42] Another important point resulting from *Sattva, IFP* and *AUPE v. AHS* is that both levels of Court have recognized the "parol evidence" rule remains applicable, despite controversy as to its relevance. That rule limits the use of any extrinsic evidence that would "add to, subtract from, vary, or contradict" a contract, except in limited situations, such as where an ambiguity is found[17].

[43] The Alberta Court of Appeal in *IFP* clarified that "mere difficulty of interpretating a contract is not the same as ambiguity….A contract is ambiguous when the words

[15] At para. 30.
[16] At para. 32
[17] *IFP* at para. 81.

are "reasonably susceptible or more than one meaning"[18]. Even then, the types of evidence that can be relied upon remains limited by the parol evidence rule and never includes evidence of subjective intentions.

[44] This Arbitrator has very recently reviewed and applied these principles of contract interpretation in several decision, including *AHS v. UNA (Wright Grievance)* which was upheld on review in 2023[19]. That analysis is adopted – although not repeated – here, including the comments made regarding the realities of labour relations.

Application to the Facts: Relevant Surrounding Circumstances

[45] I am prepared to accept the following as relevant surrounding circumstances for resolving this dispute:

i. A yard crew consist historically was composed of a conductor and two yard helpers;
ii. The Company is required to negotiate with the Union for any reductions to that crew consist: Article 83.2;
iii. The negotiation of the Western Conductor Only Agreement in 1992 reduced that crew consist for certain work, allowing that work to be preformed with a Conductor Only;
iv. This work was called "Conductor Only" work;
v. This change was brought about due to technological advances and developments in how trains were operated;
vi. The purpose of the Western Conductor Only Agreement in 1992 was to "minimize the switching and work performed by the Conductor-only crew[20] and was a significant change in this industry;
vii. "Yard" service work and "road" service work are two different types of work performed by Conductor Only crews and are subject to different provisions;
viii. Different Agreements were also negotiated for different regions;

[18] *IFP* at para. 86.
[19] 2022 CanLII 132525; upheld on review [2023] Alta. L.R.B.R. Ld-57. In Alberta, the Labour Relations Board reviews arbitrator's decisions Further appeal directly to the Court of Appeal is only allowed with the permission of that Court, and only for certain, limited questions. *AUPE v. AUN (Wright Grievance)* has not been further appealed.
See also the discussion of these principles in *Unifor Local 777 v. Air Liquide Canada Inc.* 2021 CanLII 5489; and a summary of all principles in *AUPE v. AHS (Named Holiday Grievance)* 2022 CanLII 22226.
[20] As acknowledged by the Company in its Reply Brief; p. 3.

ix. The provisions originally included in the Western Conductor Only Agreement for (yard) Conductor Only work have now been incorporated into the collective agreement by Article 83A.

x. The "Questions and Answers" relating to the Western Conductor Agreement were "Compiled from the Explanatory Meetings with Respect to the Conductor/Yard Foreman Only Agreement Signed on January 15, 1992" and are relevant "surrounding circumstances" which can be an aid to interpreting what became Article 83A.

xi. The Company – by referring to those Questions and Answers to support its argument – has acknowledged that document as an uncontroversial background fact from the time the contract was entered into and it is accepted as a relevant surrounding circumstance. [21]

xii. The Union executive provided copies of these Questions and Answers to their membership shortly after the contract was executed.

xiii. The parties have been given direction from this Office and *ad hoc* arbitrators to conduct further negotiations in bargaining to clarify the contract. No clarification has occurred.

[46] I do not consider the provisions of either Article 83A.1(b) or (d) to be ambiguous.

Doubling Work

[47] Considering first the issue of doubling, the Union has argued that the type of doubling over work performed by the Grievor was not contemplated work under the Conductor Only provisions.

[48] I cannot agree with the Union that the Company is limited in its doubling requirement to whether the track is of sufficient length. The parties were obviously alive to that limitation, as they referred to that limitation specifically in Article 15.2(b). That same restriction was not included in Article 83A.1. Had the parties meant for the same restriction to apply, I am satisfied the same wording would have been used.

[49] That specific limitation must be gained through bargaining and not awarded at arbitration.

[50] That work was also subject to the negotiation of a different phrase, which related to a different type of Conductor Only service ("road") service. The provisions relating

[21] It was not argued by the Union that the Q/A was not a relevant surrounding circumstance relating to the intent to be given to Article 83A.1.

to that service were located in Article 15.2(b)(iv). The wording at issue in Article 83A was not the same wording used by the parties in Article 15.2, which used the phrase "requirements of service". That is a further distinguishing element.

[51] While I agree with the Union that doubling over was not "absolutely needed" *in order to marshal* this train to protect those dangerous goods – as that could have been accomplished with a single double-over – meeting "marshalling requirements" was *not* the criteria that the parties agreed to in Article 83A.1(b); that criteria was only specifically referenced in Article 83A.1(d). The wording the parties used in Article 83A.1(b) was "absolutely required" **to** "*assemble the transfer movement for departure"* [emphasis added].

[52] It is a canon or rule of interpretation that when different words are used, different meanings are intended. The Union's argument would have the arbitrator "read in" the same "marshalling" limitation to the wording used in Article 83A.1(b). I do not have the jurisdiction to do so. That is a gain that must be made by bargaining.

[53] Despite this different choice of words, the Union has argued the meaning of this phrase is coloured by the jurisprudence which has considered the phrase 'requirements of service' which was the phrase used regarding road service Conductor Only "switching" work. It argued that this meaning is not to be derived by referring to the efficiency of the Company's operations. For this proposition, it relied on **AH583** and argued the same fundamental principles apply as that found for "requirements of service". It also relied on **AH606.**

[54] In **AH583**, the Arbitrator was not considering doubling work, but switching work, in road service Conductor Only provisions.

[55] I have several difficulties with accepting that the principles in these decisions are 'fundamental' and applicable to yard service. That hesitation stems not only from the difference in wording the parties chose, and the different types of work at issue (doubling versus switching), but also from a close reading of this jurisprudence.

[56] **AH606** quotes **AH560** as support for the finding that it is "well settled" that "requirements of service" is not "equivalent of the arrangement which would best

suit the convenience or efficiency of the Company". *However,* **AH560** does not actually stand for that proposition. **AH560** states the following regarding the phrase "requirements of service", *as it relates to switching*:

> After careful consideration, **the Arbitrator is satisfied that the phrase "the requirements of the service" can involve some regard for the requirements of the Company or the Company's customers**. *I am compelled to conclude that the intention of the phrase "to meet the requirements of the service" obviously includes those circumstances where, by legal regulation or otherwise, certain cars or commodities, for example cars containing hazardous goods, must be marshalled at a certain position within the consist of a train.* **That, however, is not the limit beyond which switching can be performed in relation to their own train. In the Arbitrator's view it is significant that the parties have acknowledged, as reflected in Q&A 11, that it is for the Company to define "requirements of service" and that "present practices" are to continue, bearing in mind that in Western Canada road crews have traditionally performed some switching.**[22]

[57] In **AH583,** after acknowledging that regard that can be had for the "requirements of the Company or the Company's customers…" and that "it is for the Company to define "requirements of service"…" the arbitrator then appears to contradict the discretion given to the Company by his finding in **AH560.** He states that Conductor Only crews cannot be "compelled to perform yard work whenever it is more efficient for them to do so from the standpoint of customer service".

[58] Later still, in **AH606**, the arbitrator then found it was "well settled that "requirements of service" is *not* the equivalent of the arrangement which would best suit the convenience or efficiency of the Company". However, in making that statement, the only reference for that stated support is the *middle* portion of the above quotation from **AH560**, which as noted, was only quoted in part, so is incomplete[23]. The sentence immediately following that quoted was omitted. It stated "**that, however is not the limit beyond which switching can be performed in relation to their own train"** and "…**it is for the Company to define "requirements of service".**

[59] While it is not necessary to resolve this confusion for the purposes of this Award - given the different provisions at issue in this case - I cannot agree with the Union that this jurisprudence sheds any light on the meaning the parties intended be given

[22] At p. 23, emphasis added.
[23] At p. 5

to the phrase "limited to that necessary to assemble the movement for transfer" in Article 83A, for doubling work.

[60] Turning to what the parties objectively intended by the words they chose to use in Article 83A.1(b), under the modern principle, dictionary definitions can be used to inform meaning, where a specialized meaning is not otherwise evident. I have not found evidence of any specialized meaning for the phrase "limited to that necessary", and in particular I have not found that meaning can be inferred from jurisprudence related to the road service provisions in Article 15.2.

[61] The Merriam Webster defines a "limit" as "something that bounds, restrains, or confines". The word "necessary" is defined in the same dictionary as "absolutely needed: required". The limit that is created in this case "bounds, restrains, or confines" doubling work to that which is "absolutely needed" or "required".

[62] The next question is "Required to do what?" The answer is to "assemble the transfer movement for departure".

[63] The Company relied on Question and Answer Number 21 to support its position. That relates to Clause 3.2(b), which became Article 83A.1. I agree that Q/A 21 is evidence of surrounding circumstances - uncontroversial background facts - which can be used as an aid to interpretating these provisions. That Question and Answer is:

> Clause 3.2(b)
>
> Q. 21 When assembling a transfer, <u>**is it the intent**</u> **to have a crew assemble such a transfer out of many tracks?**
>
> A. At the originating yard or interchange, doubling is **limited to that necessary to assemble the transfer movement for departure.** ***This may require doubling out of more than 2 tracks.*** [emphasis added].

[64] Since the answer itself lifts the language from Article 83A, that first part of the answer is of limited aid. However, the answer goes on to state that to perform what is "necessary to assemble the transfer movement for departure" *may* require "doubling out of more than 2 tracks".

[65] I am satisfied that by Q/A 21, the parties contemplated that the doubling work that was considered as "necessary" *could* come from more than two tracks and was not limited to only a single double over, neither was any explanation required for the Company's decision to make that choice. This interpretation is consistent with why the doubling was "necessary" in the first place: it was "limited to that necessary" to *"assemble the transfer movement for departure*".

[66] The word "assemble" is defined as to "bring together…to fit together the parts of". I am satisfied it is *the Company* that is in a position to determine how a train must be "assembled" for that departure. The Union would not have any understanding of the Company's particular needs regarding how a train is to be 'fit together' for departure. I do however accept this provision protects against any requirement of the Grievor to work with cars which are not required to be "brought together" or "fit together" for that departure.

[67] This finding is consistent with the genesis or aim of Article 83A.1. While I accept those provisions were to limit the types of work that could be performed by reduced crews, the flip side of that is that the provisions were negotiated as it was recognized that certain work *could* be appropriately performed by reduced crew consists – including doubling work out of more than 2 tracks to assemble a train for departure. This was because there had been technological developments and advancements in train operation that led to the negotiation of these provisions in 1992, in the first place.

[68] I am satisfied that in this case, the Grievor's work was associated with assembling a particular train for departure and for not any other purpose. The Company had determined that this movement was to be "assembled" in a particular order, with two cuts of cars – those in PF14 and PF15 - put together in a certain manner. This did not offend the limitations on doubling work in Article 83A.

Switching Work

[69] The next issue is whether the "switching" performed by the Grievor was in violation of Article 83A.1. The Union also carries the burden to establish the breach it alleged.

[70] By Article 83.1(d), the parties "limited" switching work to "that necessary" for three circumstances: a) to meet the marshalling requirements; and the two requirements set out in b) to "remove any mis-routed cars or set out bad order cars".

[71] Giving these provisions a "plain and ordinary meaning", there was no argument that the switching in this case was in relation to any "mis-routed cars" or 'bad order cars". That leaves the question whether switching was performed to meet "marshalling" requirements.

[72] I am satisfied that "marshalling" requirements are as set out in Section 6.0 of the Greater Vancouver Operating Manua (GVT Manual). Section 6 dated May 1, 2023 states that "marshalling restrictions apply to all placarded cars (loads and residues) on movements which will *exceed* 15 MPH" (emphasis added). It then sets out those restrictions. I am further satisfied that marshaling for dangerous goods is where a buffer car separates those cars from a locomotive, for safety reasons.

[73] The Union has noted that CROR defines a "transfer" as movements limited to *less than* 15 MPH (emphasis added). The Union argued there were no marshalling requirements for a buffer car for this yard transfer, as transfers operated at speeds of less than 15MPH as noted in the CROR.

[74] I cannot agree. Under the Memorandum of Agreement establishing CROA, the parties have given CROA arbitrators the ability to seek evidence, where required, to determine an issue.[24] This arbitrator sought that evidence regarding whether the transfer movement in this case would exceed 15 MPH. I am satisfied this transfer movement between Thornton Yard and McLean Yard was included in the exemption, as it proceeded through one of the Yards listed in Section 2.1.2 of the GVT Manual (Lynn Creek) and it also operated on the Yale and New Westminster subdivisions.

[75] As cars carrying dangerous goods were part of this transfer movement, and as the Company has established that movement could proceed at track speed, greater than 15 MPH, marshalling with a buffer car for dangerous goods *would* be required.

[24] Article 13

[76] While the Union argued that the cars were not placarded, as required of cars carrying dangerous goods required to be marshalled with a buffer car, that is the Union's burden to establish. No evidence of that lack was provided, such as pictures which were time and date stamped.

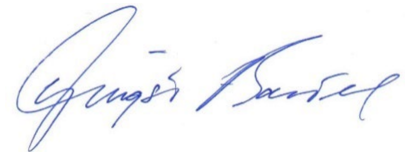
[77] I am satisfied that marshalling requirements *did* require the switching work that was performed and that this therefore qualified as permitted Conductor Only work.

Conclusion

[78] The Union has not met its burden of proof to establish the Company has breached Article 83A.1 of Agreement 4.3 for either the doubling or switching work performed by the Grievor as a part of a Conductor-Only crew.

[79] The Grievance is dismissed.

[80] I retain jurisdiction for any questions relating to the implementation of this Award and to correct any errors and omissions to give it the intended effect.



February 20, 2024

CHERYL YINGST BARTEL
ARBITRATOR