

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

CASE NO. 5031

Heard in Calgary, April 11, 2024

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The issue in dispute is the Company advertising and awarding of positions then changing the conditions of the assignments without agreement, proper notification causing wage lost to employees.

THE UNION'S EXPARTE STATEMENT OF ISSUE:

IP claims submitted by Locomotive Engineer Jamie Norrie and Conductor Anthony Donati after working an advertised Conductor Only H62-05 Welland Road Switcher on April 5, 2022 and performing work outside the parameters of Conductor Only operations as outlined in Articles 15, 48, 67, and 68 were declined.

Union Position:

For all the reasons and submissions set forth in the Union's grievances, which are herein adopted, the Union contends that the Company has violated Articles 15, (48, 67, and 68 c-only language/payment).

As noted, this was an advertised, assigned conditions awarded to employees per their bid, the Company changed the conditions of the assignment without providing a new advertisement of job conditions. The employees account of the unilateral change were now being deprived of their right to certain conditions/premiums as what was afforded by the bulletins/assigned conditions. The Company called an additional employee to work with this crew causing the assigned employees to be affected financially. The employees were entitled to the C-Only premiums as established by assigned bulletins.

Based on the reasons as stated, the Union requests that the Company cease and desist such violations and place in line for payment the above noted claims by Jamie Norrie and Anthony Donati as attached in the step 2 grievance as well as set up an abeyance code to track further claims.

Notwithstanding the above, the Company ought to have cancelled the advertised assignment that day with full pay to the crew, allow them to book CCA rest, called an AdHoc assignment in its place, and a new tie up produced in CMA for those working the AdHoc assignment.

Account the Company not providing an Abeyance Code the Union request all claims whether submitted or not be compensated as well, account employees are not allowed to submit additional claims as they will be subject to discipline.

THE COMPANY'S EXPARTE STATEMENT OF ISSUE:

Dispute:

Declination of an IP claim submitted by Locomotive Engineer J. Norrie after working H62-05 Welland Road Switcher on April 5, 2022.

The issue in dispute is the Union claims that should the Company add a brakeperson on an ad hoc basis (single shift) to an assigned 2-person roadswitcher, the assigned 2-person crew (Engineer & Conductor) should be entitled to Conductor-Only premiums.

The Company maintains that it has the ability to add a 3rd crew member (brakeperson) to a two-person crew however the Union is disputing this ability as well as the pay aspect (the declined IP claim). The Company maintains the right to add a 3rd person to a 2-person crew should not be before the arbitrator.

PRELIMINARY OBJECTION:

The Union has failed to initiate this grievance in a timely manner as prescribed within the Collective Agreement. The Union filed the step 2 grievance 76 days following the date of the dispute. The Collective Agreement is clear that filing must occur within 60 days from the date of the cause of the grievance. The Collective Agreement is also clear that any grievance not progressed by the Union within the prescribed time limits shall be considered invalid and shall not be subject to further appeal. The Company objects to the untimeliness of this grievance and maintains it must be considered void.

The Union has been non-specific in what specifically within these lengthy Articles they are alleging the Company is in violation of. Article 48 has 12 clauses spanning 5 pages. Article 67 has many clauses, letters and Q&A's spanning 31 pages. Article 68 has 19 clauses spanning 9 pages. For the Union to be so non-specific in what they are alleging the Company is in violation of, prejudices the Company's ability to provide an appropriate and specific response.

The Company maintains that the Union cannot allege violations of Collective Agreement articles without pointing to specific items, clauses or language within these articles. By waiting until arbitration to expand and point to the specific language they allege the Company has violated is lying in the bushes to prejudice the Company's position and is inappropriate. The Company objects to the Union's vague and non-specific allegations that the Company has violated Articles 48, 67, and 68 of the Collective Agreement.

The Union has shown within the same grievance correspondence that they can be specific in their allegations. Within the step 2 grievance submission the Union points to Article 15.01 (3) a) and describes how they allege the Company is in violation.

Without prejudice to the above objection, the Company provides the following.

COMPANY POSITION:

The Company disagrees and denies the Union's request.

The Company has the ability and the right to add an additional crew member to a crew. Specifically in the instant matter, the Company added a brakeman to a two-person crew (Engineer & Conductor otherwise known as Conductor-Only) to support the crew to perform additional switching. There is no language within the Collective Agreement that prohibits the Company from doing so.

The Company maintains that Engineer Norrie's IP claim was properly declined by the Company's auditor. The Company has no records of any claim submitted by Conductor Donati. The appropriate mechanism to submit any pay that an employee believes they are entitled to but is not certain of is through an IP claim. Conductor Donati failed to take this step and therefore there can be no allegation of a violation when in fact there was no claim submission or declination.

The parties have negotiated language to outline what will happen should a brakeman be added to a crew on a fixed mileage run. The instant dispute is not a crew working a fixed mileage run. There is no negotiated language to support the Union's position.

Hamilton historically has assigned positions with no ownership and junior employees are forced from London to fill these positions weekly. When the Union states that these assignments are advertised and assigned conditions are awarded to employees per their bid, that is not factual. The Conductor (Mr. Donati) did not desire nor request to work the job in question. He was junior forced to the H62 for the week of April 4, 2022. Moreover, the week of April 4th in Hamilton, 3 of the 9 assigned Conductor/Trainperson positions had no ownership meaning that no employee permanently owned 3 of the 9 positions so these 3 positions had to be filled weekly by London employees.

For the Union to state that the Company ought to have cancelled the assigned crew of Norrie and Donati and pay them their full wages, and call another crew to perform the work, is preposterous. There is no Collective Agreement language that would govern the Company having to do this nor would the Company ever agree to such language or practice. Furthermore, the Union's suggestion is to cancel a local crew working in Hamilton and call a crew working out of London to drive to Hamilton to perform the work. Hamilton is an assigned service only terminal without any additional crew members on any spareboards so any additional work has to be done by crews from London.

When the change from a 3-person crew to a 2-person crew was made (week of April 12, 2021), both CO & BK positions had no permanent owners. Instead of forcing multiple employees weekly from London to Hamilton to fill these positions, the Company determined that only 2 persons were required to complete the work and if additional work was required, the Company would determine to add a brakeman on an ad hoc basis to assist the crew.

The Company does not abolish 3-person crews and establish 2-person crews just to continually add a 3rd person frequently however, when required, the Company has the ability to add a 3rd person on an ad-hoc basis. The H62 job (formally TE21) was changed from a 3-person crew to a 2-person crew on April 12, 2021. Between April 12, 2021 and April 5, 2022, there were only 3 instances where a brakeman was called to assist this job on an ad hoc basis. Of the approximately 260 shifts that occurred in the calendar year, only 3 shifts did the Company determine a brakeman was required to assist the crew.

Engineer Norrie occupied the H62 position when it was a 3-person crew and continued to maintain the position when it was established as a 2-person crew.

The Union claim that working conditions specific to pay were changed and that the crew were being deprived of their right to certain conditions/premiums as what was afforded by the bulletins/assigned conditions. There are no working conditions specific to pay outlined in the job establishment bulletin. The crew's job specific to pay was not defined anywhere in writing, especially any specific pay that they were entitled to. The Company did not go against anything that was bulletined when adding a brakeperson on an ad hoc basis.

Regarding the Union's request for "cease and desist", there are no provisions in the Collective Agreement for submission of a grievance encompassing a request for the Company to "Cease and Desist". The MOS establishing CROA&DR clearly indicates that a dispute must be progressed through the grievance process and CROA 4557 case law supports that position. The Union's allegation of a cease and desist is a further attempt to seek relief for an allegation of multiple disputes without progressing each through the grievance process.

The Union's attempt to achieve a blanket award for all instances—future and present—would be grossly inappropriate given that the nature of each occurrence is unique to the individual circumstances at the time of the alleged violation. The Company objects to the Union's request for a cease and desist order.

Based on the foregoing, the Company maintains the matter in dispute was handled appropriately and as outlined within the Collective Agreement. The Company maintains that there was no violation of the Collective Agreement and there is no entitlement to any additional wages to Engineer Norrie and Conductor Donati. The Company requests the arbitrator be drawn to the same conclusion and deny the Union's request.

FOR THE UNION:

(SGD.) W. Apsey -and- E. Mogus

General Chairpersons for CTY.E -and- LE-E

FOR THE COMPANY:

(SGD.) A. Cake

Manager Labour Relations

There appeared on behalf of the Company:

A. Cake – Manager Labour Relations, Calgary
E. Carriere – Manager Labour Relations, Calgary

And on behalf of the Union:

R. Church – Counsel, Caley Wray, Toronto
W. Apsey – General Chairperson, CTY-E, Smiths Falls
E. Mogus – General Chairperson, LE-E, Oakville
J. Molnar – Local Chair, Hamilton

AWARD OF THE ARBITRATOR

Background, Issue & Summary

- [1] The parties have included considerable detail in this JSI, setting out the facts and issues.
- [2] Article 15 of the Collective Agreement ("CA") sets out a Weekly Placement Process. Relevant for this dispute is that this process indicates an employee's placement for the upcoming week.

- [3] In Hamilton, job abolishments or establishments must be posted locally via a Bulletin the preceding week. In this case, a single shift, *ad hoc* assignment for April 5, 2022 was originally Bulletined as a “Conductor Only” assignment, in the Weekly Placement Process.
- [4] A “Conductor Only” crew is a two-person crew, where the type of work that can be performed is limited. That type of work is also subject to certain premiums and allowances.
- [5] Locomotive Engineer (“LE”) Norrie and Conductor Donati were the crew assigned to that work. The Company then assigned a third person to that crew, being a Brakesperson.
- [6] The LE put in an IP claim for “Conductor-Only” premiums for this assignment, despite this third person being assigned to their crew. The Conductor did not make that same claim.
- [7] The claim of the LE was declined by the Company’s auditor, as the Company did not consider this to have been a “Conductor Only” crew.
- [8] The Union filed this Grievance on behalf of the LE, alleging it is a breach of the CA for the Company to change the assignment and add a Brakesperson to what was a Conductor Only crew assignment, and therefore deny the premiums and allowances owing for a two person crew.
- [9] The Company filed a preliminary objection relating to timeliness of the Grievance, on the basis it was not filed within 60 days from the date of the dispute. It also argued the Union had not made a proper claim for damages.
- [10] For the reasons which follow, the Grievance is dismissed. Given the disposition of this Grievance, it is not necessary to assess the preliminary objection. Even if the Union were successful in defeating the preliminary objection, the Grievance would fail on the merits.
- [11] The Company has not breached the CA by adding a Brakesperson to this crew. Neither is the Company required to pay the Conductor Only premiums “as if” a Brakesperson were not added, in these circumstances. As a three-person crew, the LE was not entitled to any premiums or allowances owing to a Conductor Only crew.

Relevant Contractual Language

Article 1.02 LENGTH OF RUN ALLOWANCE

- (1) Employees on trains on which no Brake person is employed will be paid the following allowance per tour of duty, according to the length of the run, over and above all other earnings for the tour of duty:

...

Article 2 – Fixed Mileage Rate of Pay

...

2.18

Should the Company utilize a Brakeperson(s) in a non-required position on a fixed milage train crew, all members of that crew, including the non-required Brakeperson(s), will received all wages and benefits pursuant to the Conductor-Only agreement as though they did not form part of that crew.

Brakepersons will only be considered as required when their presence will permit the crew to perform work beyond that which a Conductor-Only crew is confined to.

Article 15 Weekly Placement Process

15.01 FILLING OF VACANCIES

- (1) At locations where the existing Crew Change System does not fall under the following national guidelines, those locations will need to jointly (local Company and Union officers) establish a Weekly Crew Change System within 120 days of ratification. If unable to implement within the specified time frame issues may be advanced to the appropriate General Manager and General Chairman.
- (2) These procedures are designed to eliminate mid-week displacements and consequently provide employees a more stable work place.
- (3) A weekly crew change will take place each Sunday at 2201 to be effective 0001 Monday governing:
- a) Establishment or reduction of all regular assignments
 - b) Adjustments to the pools
 - c) Adjustments to the spare board
 - d) Movement to or from vacancies
- (4) Annual Vacation will begin and end effective with the weekly crew change. Employees will automatically be booked off and on by CMC, to coincide with the weekly crew change.
- (5) General Advertisement of Assignments will coincide with the weekly crew change and all regular positions will be bulletined and awarded on the basis of seniority.
- (6) The Company will post job abolishments, permanent vacancies, new assignments and known vacancies at an agreed upon date/time on a weekly basis.
- (7) Bids for weekly crew change will close between 1200 on the Thursday and 1200 on the Friday preceding the change unless otherwise mutually agreed.

- (8) Adjustments to the pool(s) and spare board(s) will be determined by local company and union officers at the agreed upon time each week.
- (9) The final weekly crew changes will be posted at the agreed upon time each week. Any subsequent corrections will be dealt with through the local management and local chairman or as mutually agreed.
- (10) Employees will advise the CMC of their desired changes through a weekly bid system.
- (11) Administration of the agreement will be done locally and any unresolved issues may be advanced to the General Chairman and General Manager.
- (12) Prior to implementation of any agreement, where deemed necessary, requisite training of employees will be handled by mutual agreement. The Company will be responsible for the costs of local union representatives conducting training or attending meetings needed to agree with the terms of any agreement and implement such agreements.

Article 48 – Road Service (East Application)

48.02

...

A Locomotive Engineer, on a train on which no Brakeperson is employed, required to perform switching....

...

48.04 Engineer will be notified when called whether for straightaway, turnaround or turnaround combination service (TCS) as provided in Articles 6 and 7 and will be compensated accordingly. Changes from straightaway, turnaround or TCS will not be made unless necessitated by circumstances which could not be foreseen at time of call...

48.08 A train on which no Brakeperson is employed may be required to stop and perform work, to a maximum of five (5) enroute locations....

Article 67.01 Definitions

...

“Required Position”

A required position shall consist of a Conductor; a Brakeperson on a road freight crew where determined by the Company that such position is needed; a position on a Road, Common or Yard Spare board; or a position in Yard Service.

“Non-Required Position”

A non-required position is a position of Brakesperson on a road freight train that has been determined by the Company as ont being needed subject to the requirement of Clause 2.

....

67.02 Parameters for Conductor Only Operations

Notwithstanding the provisions of Article 9 – Archived, all trains in freight service...may operate Conductor-Only subject to the following requirement [*multi-page stipulations for running Conductor-Only*]

...

67.03

...

- (2) All positions, whether required or non-required, will be advertised at the general advertisement of assignments; upon the setting up of new assignments; and/or upon the creation of a permanent vacancy in assigned Road or Yard Service...

67.04 Length of Run Allowance

Conductors on trains on which no Brakeperson forms part of the crew consist pursuant to this Article, except Roadrailer Service, will be paid the length of run allowance.

Conductor Only Questions and Answers

Q.15 [to Article 67]: When a Trainperson is added to a crew on an ad hoc basis to allow for additional switching enroute, is the conductor entitled to C-O payment and benefits?

A: Refer to Article 1 ¹

Article 77 – Road Service – Assigned Service Conditions

77.01 Assignments, other than work trains, **will be bulletined specifying the home terminal, initial and objective terminals for each trip, territory over which the assignment is to perform service, starting time and days of operation.** So far as it is practicable, assignments will start at the bulletined starting time, except that on any day, an assignment may be started up to five hours beyond the bulletined starting time, but not earlier than that specified in the bulletin unless otherwise mutually agreed. Should an assignment not be called within five hours of its bulletined starting time, the assigned crew shall be cancelled. When bulletined starting time is changed more than 3 hours, the assignment will be re-bulletined.²

77.02 **Bulletins for which train assignments will, as nearly as possible, specify the subdivisions on which the work is to be performed and the nature of the work.** This does not mean that crews assigned to work train service as bulletined, cannot be used for other work train services on the specified subdivisions or on other subdivisions.³

...

¹ Emphasis added.

² Emphasis added.

³ Emphasis added

The Hamilton Terminal Weekly Crew Change Procedures⁴

General Principles:

1) These procedures are designed to eliminate mid-week displacements and consequently provide employees a more stable work place.

A weekly crew change will take place each Sunday at 2201 to be effective 0001 Monday governing:

- i) Establishment of or reduction to the number of regular assignments
- ii) Adjustments to the pools
- iii) Adjustments to the spareboards
- iv) Movement to or from permanent or temporary vacancies

All regular assignments, temporary vacancies existing or known, and positions on the respective spareboards will be filled on a weekly basis.

- (a) Annual Vacation will begin and end effective with the weekly crew change. Employees will automatically be booked off and on by CMC, to coincide with the weekly crew change. If one or more General Holidays fall within an employee's annual vacation period, in all circumstances, the extra day(s) of vacation will be filled as a vacancy of less than five days (yard), six days (road), seven days (engineers).
- (b) When an employee goes on holidays before pension, his/her vacancy will be filled on the first day of the holidays, permanently.
- (c) Employees electing to take the General Holiday before or after their scheduled annual vacation period, in the application of item 4, will have their turn established in their assignment <or> pool <or> spareboard (seniority permitting) at 2201 Sunday night, effective 0001 Monday and the turn will run spare until the employee returns. (see item 16)

...

5) General Advertisement of Assignments will coincide with the weekly crew change and all regularly assigned positions will be bulletined and awarded as per individual bid and on a seniority basis.

6) The Company will post job abolishments, annual vacation vacancies, pool adjustments, or any other known claimable vacancies between 1600 EST on Tuesday to be applied the following Monday at 0001. Arrangements will be made for employees to access such information as required.

7) Bulletins advertising new assignments will be posted, by the Company, no later than 1400 EST on Thursday to take effect at crew change following the proper bulletin period. Applications for new assignments will be awarded to the senior qualified employee making an application. Arrangements will be made for employees to access such information as required.

Note: In exceptional circumstances and in the event that operational requirements necessitate an extra assignment(s) and the information supporting these requirements was received after the 1400 EST Thursday bulletin deadline, upon

⁴ Union Tab 3

mutual agreement between the Company and Union Representatives, the Company may bulletin such assignment(s), no later than 1600 EST on Tuesday. As such, these vacancies will be filled through the weekly crew placement process and will be re-bulletined the following Thursday, should the position(s) still exist.

8) Local representatives of the company will consult with the Union on adjustments to the pool(s) and spareboard(s) by no later than Tuesday at 1200 EST. The results of any adjustments will be reflected in the weekly crew changes. This weekly mileage information will be posted at all reporting locations, by 16:00 EST on Tuesday.

9) Subsequent vacancies created by this award will be filled within the same bulletin advertising the permanent vacancy or new assignment. If no applications are received, or a position is not filled by bid, the junior qualified employee on the respective spareboard, will be assigned to the position.

10) Weekly crew changes will be posted, no later than 16:00 EST on Friday. Employees who are affected, due to the weekly crew adjustment process, will be notified by the Company in a timely manner, via e-mail if requested, via fax at outpost if on duty, via bulletin, or by phone call.

11) When Locomotive Engineers exercise their seniority to a temporary vacancy they must remain on same until displaced by the regular Engineer or Senior Engineer, unless a new temporary vacancy is created as per the WPP (Weekly Placement Process). This not to include moving from one vacancy to another within a Pool.

WEEKLY Bid System

The weekly bid system will operate in the following manner:

12) The deadline for submission of the employee's weekly bid sheet, either new or revised, is 10:00 EST Friday of each week, to be effective with the following seven-day period, commencing 0001 Monday.

13) When returning from annual vacation, employees may submit a new bid prior to the 1000 EST Friday deadline. If no bid is received by that time, the last bid submitted will be used for board placement.

14) Vacancies on regular assignments created by an employee changing assignments on their return from annual vacation will be handled in the manner outlined in items 7 & 9.

15) Employee(s) returning from unscheduled absences in excess of five consecutive days (yard), six consecutive days or more (road), seven consecutive days (engineers) and whose temporary vacancy has been filled under the terms of this agreement, will notify the company of their expected date of return prior to the 10:00 Friday deadline. This employee will be placed according to their weekly bid, and in accordance with the terms of this agreement. If unable to place onto a position effective with the regular crew change, the employee's position will run spare until the employee is actually placed onto the working position.

16) In the unlikely event that employee(s) unexpectedly return from unscheduled absences in excess of five consecutive days (yard), six consecutive days (road), seven consecutive days or more (engineers), and who were unable to provide notification as outlined above, will be handled as follows;

TCRC – T (Road/Yard):

- in pool service, if holding a temporary vacancy or a permanent position, the employee will return to the position held prior to departure (seniority permitting), and the pool will run “heavy” until crew change.
- if the last position held was assigned service, the employee will return to their regular assigned position prior to departure. The employee relieving will be placed on the spareboard until crew change. Employees unqualified for all classes of service required will be assigned to familiarization tours.
- in either event, this will not result in a mid-week crew change. No monetary loss will be incurred to the employee’s affected.

TCRC – E:

- in pool service, if holding a temporary vacancy or a permanent position, the employee will return to the position held prior to departure (seniority permitting), and the pool will run “heavy” until crew change.
- if the last position held was assigned service, the employee will return to their regular assigned position prior to departure. The employee relieving will be placed on the spareboard until crew change. Employees unqualified for all classes of service required will be assigned to familiarization tours.
- in either event, this will not result in a mid-week crew change. No monetary loss will be incurred to the employee’s affected.

17) Should an employee leave their position mid-week for any reason (including taking an extra day(s) av in advance of the av period due general holiday(s) falling within the av period), the following will apply; the respective turn will run spare until the next weekly crew change (or) the respective spareboard will run short until the next weekly crew change.

NO BIDS OR INSUFFICIENT CHOICES

18) If no bid exists for an employee, or if there are insufficient choices provided by the existing weekly bid, employee(s) will be placed according to the default bid provided by the Local Union Representative. This is to be done in conjunction with the weekly crew change.

MOVEMENT WITHIN THE TERMINAL

19) The weekly crew placement process is not intended to circumvent Collective Agreement applications and/or local practices, relating to movement within the Terminal or Outposts thereto, except when such applications or practices conflict with the application of this agreement.

Local Board Placement Rules:

Movement from Pool to Pool – employees awarded temporary positions in the pool must declare a turn by 1800 Sunday, senior choice.

If vacancies are not claimed by 1800, vacancies will be filled by the oldest OMTS time first, if no OMTS time then Off Duty time will be used.

(iii) An employee who claims a temporary vacancy or an employee who is returning to a permanent pool position from a temporary vacancy and is under personal rest at the time the turn is called, will have their turn filled by the respective London Spareboard.

The employee returning to his permanent pool position or the employee claiming the vacancy will establish their turn at the bottom of the respective pool once the turn has been called out.

New turns created in a pool as a result of pool adjustments will be placed to the bottom of the respective pool in seniority order.

If a subsequent permanent pool position is created as a result of an employee moving to a regular assignment or pool, this position will be filled in accordance with Item (iii) above.

Arguments

- [12] The Union noted that employees can bid on the posted assignments for a Terminal based on their Weekly Placement Process agreement, using their seniority. It argued that more senior employees bid for assignments that attract premiums, including “Conductor Only” premiums, based on switching.
- [13] The Union relied on Article 15 and the Local Rules for the Hamilton Terminal, to support its position. It argued the Article was clear regarding the process for bidding and that the bulletin could only be modified pursuant to the parameters outlined in Article 15.01(3) and that jobs cannot be changed “mid-week”: Article 15.01(2). It was the Union’s position there were limitations on when and how the Company could change existing assignments, which differ from one terminal to the next. It pointed out that Article 15.01(3)(a) referred to the “establishment or reduction of all regular assignments” as part of the weekly crew change. It argued if the Company wanted to change the parameters of a job, it must be done as provided in Articles 15.01(6), (7), (8), and (9) and not unilaterally. It argued that any ‘corrections’ are to be mutually agreed. It argued that nothing in the language contemplates the Company unilaterally modifying a job, as it did on April 5, 2022. It argued the Company had to ‘re-post’ any change in accordance with the procedure in Article 15 and the associated Hamilton Weekly Placement Process.
- [14] It argued that the assignment on April 5, 2022 was bulletined as a Conductor Only assignment, so the crew had reasonable expectations of a certain level of remuneration from that assignment, owing by Article 48 and 67. It argued the Company must honour the Bulletin, which contained important details regarding that assignment. It was the Union’s position that by unilaterally changing the parameters of the assignment, the Company improperly changed the wage structure of the assignment. It argued the

Company was not permitted to either change the terms of that assignment or deny premiums owing but for the “impermissible change”.

- [15] It was the Union’s position that the Company should have cancelled the assignment, with full pay to the crew, allowed them to book rest, and then called an *ad hoc* assignment in its place. It argued that even if the Company could change the assignment, the premium structure should have remained, as per the original terms of the assignment. It also pointed out that by refusing to set up an abeyance code for such issues, the Company has denied the Union the opportunity to track the damages flowing to its members from this behaviour and the Union has been prejudiced as a result.
- [16] The Company argued it had not breached the Collective Agreement. It argued it has – and always has had – the right to add a third Brakesperson to a two person assigned road switcher crew, and has done so for this assignment in the past. It challenged the argument regarding bidding on this assignment, pointing out that the Conductor was a junior employee, forced from London terminal for the week to fill this position. It also argued the Union has taken inconsistent positions in other Grievances heard by this Office.
- [17] The Company argued that Article 15 was a Weekly Placement Process, which did not give the Union the right it claimed and that Article 77 applied. That Article directed what information had to be included in the Bulletin, which did not include whether the job was a “Conductor Only” assignment. The Company also relied on Q/A 15 of Article 67 to support its right to add a Brakesperson. The Company maintained that the only situation where a Conductor Only premium would be paid when a third person was added to the crew was specifically addressed by the parties in Article 2.18.
- [18] The Company argued that as no “Conductor-Only” work was performed by this crew once the Brakesperson was assigned, no “Conductor-Only” premiums were owing. The Company argued that no waiver of the timelines was established by the Union. It also argued that the Union did not include any request for damages in its *ex parte* statement and could not make that argument at this late stage.

Analysis and Decision

- [19] As noted above, in view of the disposition of this Grievance, it is not necessary to address the preliminary objection of the Company; its arguments regarding the vague language used in the Grievance process; the Union's claims of waiver; or whether damages were properly claimed. Even if the Union were successful and the timeliness objection was over-ruled, or a waiver was found to have occurred, the Grievance cannot succeed on the merits, so there is no issue of damages.
- [20] The principles to be applied by an arbitrator when interpreting a collective agreement were recently canvassed by this Arbitrator in **CROA 4884** and are adopted – but not repeated – here. In summary, it is not the *subjective* intentions of the parties that are determinative, but rather effect must be given to the “plain and ordinary” meaning of the words the parties chose to record their deal.⁵ It is also well-settled that an arbitrator cannot make a deal for the parties which they did not make for themselves, effectively amending a collective agreement – whether by reading in language or otherwise⁶. As noted in **AH809**, an arbitrator must take an agreement as she – or – finds it.
- [21] To give factual context to the interpretation, an arbitrator must also consider the “surrounding circumstances” which existed at the time an agreement was negotiated. These include known and undisputed facts. The historical background to Conductor Only crews are relevant surrounding circumstances for this Grievance.
- [22] As was noted in **CROA 4883**:

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...⁷

- [23] “Conductor Only” crews were a major change in how trains were operated, and resulted in significant amendments to the various CA's in place at that time (which were later consolidated).

⁵ See also **AH809**

⁶ As outlined in the CROA Agreement

⁷ At para. 20

- [24] The Union relied on Article 15. That is the Weekly Placement Process, by which employees are placed in jobs for the upcoming week. Article 15.01(5) contains the requirement that “all regular positions will be bulletined”. Hamilton as a terminal has its own Weekly Crew Change Procedures, with the same reference to the “governing” of the “i) establishment of or reduction to the number of regular assignments” and the requirement to bulletin “all regularly assigned positions”⁸.
- [25] A key underlying premise of the Union’s argument is that the Company was required to “honour” its bulletin for this assignment as a Conductor Only assignment – with the associated premiums and allowances – and that it could not “unilaterally” change those job parameters.
- [26] This argument calls into question what is actually *required* by the CA to be “bulletined” as part of the Article 15 process. This is because – embedded in the Union’s argument – is a key assumption that the job assignment/bulletin process was required *to stipulate details regarding the crew consist*, or that the assignment was to be a “Conductor Only” assignment.
- [27] With respect to the able argument of the Union, that assumption is faulty. The language of this CA does not support any such requirement.
- [28] The details that must be included in the bulletin have specifically been agreed to by the Parties and are listed in Article 77. These details do not appear in Article 15. Those details are:
- a. The home terminal;
 - b. Initial and objective terminals;
 - c. Territory over which the assignment is to perform service;
 - d. Starting time and days of operations; and “as nearly as possible”, the
 - e. Subdivisions on which the work is to be performed; and
 - f. The nature of the work.

⁸ Number 5, p. 11.

- [29] If the parties had intended that details of the crew consist were also to be included in the job bulletin, I am satisfied that would have been specifically stated in Article 77, as was done for other details of an assignment. The parties did not make that agreement. It would be an improper amendment of the CA for this Arbitrator to “read in” to Article 77 a reference to the crew consist or to whether this was a “Conductor Only” crew. It is therefore not necessary to decide whether details of an assignment bulletin can – or cannot – be changed by the Company after originally posted, since the crew consist was not a detail required to be included in the bulletin, in any event.
- [30] The Union argued that as the crew consist was a Conductor Only assignment, there was a wage expectation of this LE from Article 48.
- [31] Article 48.08 refers to “A train on which no Brakeperson is employed...” stopping to perform work, and limits the amount of enroute locations where this can occur during a single tour of duty. There was no breach of that Article either. Article 48.04 states that engineers are to be notified of certain details when they are called, however there is no language relating to notification of whether the assignment is a Conductor Only assignment. Likewise with Article 4.02, which refers to payments for a train “on which no Brakeperson is employed” and switching is required to be performed, which was not this situation.
- [32] Further, I agree with the Company that its ability to add a third person to a Conductor Only crew is supported by a review of the CA as a whole, which is consistent with this conclusion.
- [33] Article 67 is a multi-page Article titled “Conductor-Only Operation in Freight Service”. There is a relevant Question and Answer (Q/A 15) which is part of this Article, and has been integrated into the CA.
- [34] The “Question and Answer” document is a unique document in this industry, by which the parties agree on certain questions and answers to explain to the Union’s members when changes to the CA are made. As earlier noted, the changes to allow “Conductor Only” assignments were significant. Q/A 15 states “*When a Trainperson is added to a crew on an ad hoc basis to allow for additional switching enroute, is the Conductor entitled to C-O payment and benefits?*” This is one of the very questions at issue in this Grievance.

- [35] The *ability* of the Company to add that Trainperson is *assumed* from the very wording of that question. If the Union were correct that the Company could *not* change an assignment to add a third person, the question would not have been worded in that manner by the parties, as if they could. The wording of the question therefore supports the Company's position that they have retained the right to add a third person to a Conductor Only crew.
- [36] The Company's position is further supported by the answer to Q/A 15, which is: "Refer to Article 1". Article 1.02(1) states that it is trains where "*no Brake person is employed*" that attract a Conductor Only allowance per tour of duty. This Q/A supports the Company's argument that it has not only retained the right to add a Trainperson to a Conductor Only crew, but that where a Brakesperson *is* employed, it is no longer a "Conductor Only" crew, so no allowance is payable. This is consistent with the references in Article 48 to trains "where no Brakeperson is employed".
- [37] Article 67.04 also supports this ability. It states that "Conductors on trains *on which no Brakeperson forms part* of the crew consist pursuant to this Article...will be paid the length of run allowance"⁹. This Article also supports the conclusion that it is the lack of a Brakeperson that attracts the premium.
- [38] Article 2.18 is an important Article in interpreting this CA. Article 2.18 is limited to "Fixed Mileage" crews. In Article 2.18, the parties specifically addressed the situation where those crews could continue to receive Conductor Only premiums, even with the addition of a Brakesperson. That only occurs in certain limited situations for those crews, as noted in that Article.
- [39] The Union acknowledged the issue in this case does not involve a *Fixed Mileage* crew.
- [40] The existence of this Article is strong support for the conclusion that if the parties objectively intended that Conductor Only premiums should be paid to other crews, in other situations, they would have made a similar, specific, reference.
- [41] Neither was this a "correction" that was required to be dealt with through local management: Article 15.01(9). There was no error in the job assignment or "correction"

⁹ Emphasis added.

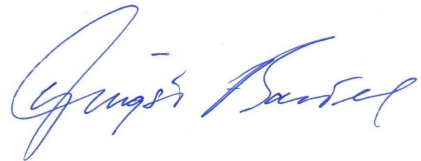
required. Another employee was placed onto an existing crew. No 'mid-week displacement' of employees occurred as a result of this change, which is the General Principle supported by the Weekly Crew Change procedures. Nor was a regular assignment reduced. This was an *ad hoc* assignment.

[42] The Union has not met its onus to establish that the Company breached the Collective Agreement when it added a Brakeperson to this assignment on an *ad hoc* basis, and did not pay Conductor Only premiums to the LE. The Company retained the right to make that change and it did not offend Article 77 or the Article 15 process by doing so. Nor was the Company required to continue to pay the crew a premium as if it were still a Conductor Only crew, after the addition of a Brakeperson, as this was not a situation contemplated by Article 2.18.

[43] The Grievance is dismissed.

I remain seized to address any questions regarding the implementation or application of this Award. I also remain seized to correct any errors and address any omissions, to give this Award its intended effect.

July 9, 2024



**CHERYL YINGST BARTEL
ARBITRATOR**