

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

CASE NO. 5043

Heard in Montreal, May 15, 2024

Concerning

ALSTOM TRANSPORT CANADA

And

**TEAMSTERS CANADA RAIL CONFERENCE
MAINTENANCE OF WAY EMPLOYEES DIVISION**

DISPUTE:

The employees share of the premium cost of their benefits plan.

JOINT STATEMENT OF ISSUE :

The parties entered into a first collective agreement which commenced on October 1, 2021 and runs until September 30, 2024. During the negotiations for this collective agreement, the parties developed a new set of work rules for the members working at Alstom Transport Canada in Brampton, Ontario.

Among the many issues negotiated by the parties was the Benefits plan.

The members of Alstom Transport Canada remained on the pre-existing benefit plan up until May of 2023 when it was discovered that they had never been placed on the "Union plan" agreed to during bargaining. Their benefit plan changed at this point in time.

THE UNION'S POSITION:

- 1) The co-pay introduced by Alstom Transport Canada was not negotiated by the parties;
- 2) The introduction of the co-pay was unilaterally imposed 1.5 years after the grievors had continued on with their pre-collective agreement benefits;
- 3) At no time during the negotiation process was the Union provided with any benefits outlines or bargaining demands that included a co-pay, with the exception of the dental plan which is not in dispute.

The Union Requests That: All co-payments that have been deducted to date be returned to the members immediately and (2) no future co-payments be requested or required.

THE COMPANY'S POSITION:

- 1) A co-pay arrangement for the employees' benefits was already in effect before the employees decided to certified with the Union on July 20, 2020.
- 2) At the time the employees were entitled to the Company's non-unionized benefits plan.
- 3) At the time the Company was paying 80% of the premiums and employees were required to assume 20% of the costs.

4) Alstom's position with respect to benefits was clear during bargaining, it intended to change the current plan and integrate the same plan provided for other unionized employees.

5) During bargaining, the Union accepted to the change in benefits.

6) During bargaining and before concluding bargaining, the Union was advised that of the Company's position that the employees would be required to pay the same percentage of the costs as they were paying at the time. The parties later concluded their first collective agreement.

7) Following ratification, Alstom erroneously maintained the former benefits plan. When Alstom realized its mistake, the Union and the employees were advised and the new benefit plan, as agreed by the parties during bargaining, became in effect.

8) Alstom did not seek reimbursement from the employees for the additional benefits received following ratification.

The Company Requests That: The Company did not violate any articles of the Collective Agreement and the Benefits plan and the current co-pay arrangement respect the agreement between the parties during bargaining. The grievance should be dismissed.

For the Union:
(SGD.) W. Phillips
President, MWED

For the Company:
(SGD.) A. Ignas
Industrial Relations

There appeared on behalf of the Company:

C. Trudeau	– Counsel, Fasken Martineau DuMoulin, Montréal
S. Lorquet	– Counsel, Fasken Martineau DuMoulin, Montréal
A. Ignas	– Industrial Relations Canada, Toronto
C. Henripin	– Human Resources, Business Partner, Montreal
J. F. Brault	– Human Resources, Business Partner, Brampton

And on behalf of the Union:

W. Phillips	– Preseident, MWED, Ottawa
P. Gauthier	– Atlantic Regional Director, Montreal

AWARD OF THE ARBITRATOR

Context

1. This matter concerns a dispute about whether there is a co-pay obligation for benefits, arising out of a first collective agreement.

2. There is no evidence of any bad faith on either side. There is a genuine dispute as to whether the Union agreed that its members would pay 20% of the cost towards medical and para-medical benefits.

3. Both sides have led extrinsic evidence concerning the bargaining history on benefits.

4. **Issues**

A. Preliminary matters

B. Was there an agreement that Union members would co-pay 20% towards medical and para-medical benefits?

C. If not, what remedy is appropriate?

A. Preliminary matters

5. The Union has led evidence with respect to a draft Letter of Understanding (“LOU”, at Tab 8, Union documents) proposed by the Company concerning this issue. Ultimately, the LOU was never signed.

6. The Company objects to the introduction of the LOU as it is covered by settlement privilege and invokes Union Carbide Canada Inc. v Bombardier Inc. 2014 SCC 35.

7. The LOU was sent to the Union in May 2023 in an attempt to settle an emerging dispute between the Parties. The grievance filed in September 2023 specifically mentions: “This co-pay...has been the subject of mutual correspondence in an attempt to resolve has ultimately not been able to be resolved thus requiring this grievance...”

8. I agree with the Company that the LOU is covered by settlement privilege and is therefore inadmissible.

B. Was there an agreement that Union members would co-pay 20% towards medical and para-medical benefits?

Position of the Union

9. The Union notes that prior to certification at the Brampton site, employees had a benefits plan with two options for medical and para-medical benefits. The first option was employer paid (with the exception of dental benefits, which are not in issue here). The second, better option, had a co-pay with the employees.

10. After bargaining, unionized employees were left with only the first option, while management employees had access to the second option.

11. In May 2023, some nineteen months after the new collective agreement was in place, the Company attempted to deduct a co-pay for the first time, with deductions going back to January 2023. This was resisted by the Union and the deductions were reimbursed. However, ultimately the Company unilaterally implemented a co-pay as of May, 2023.

12. The Union insists that there was never any discussion of introducing a co-pay during negotiations, and they would have strongly resisted such a demand, as it would represent a step down in benefits as a result of unionization. The Union states that the only matters discussed related to a single Union plan, and a reduction in the STD benefits, such that STD benefits would be the same for unionized Company employees.

13. The first time the notion of premiums arose was in May 2023, long after the agreement had been signed. It notes that the Company's excuse was that there had been an error and co-pays had not previously been deducted. It notes that it is curious that the Company described the May deductions as "inadvertent" and that the deductions only went back to January 2023, and not as of the date of the new collective agreement in September 2021.

14. The Union submits that the exchanges between the Parties during negotiations, including schedules with the actual benefits to be provided, never mentioned a co-pay.

15. The Union submits that if the Company wishes to reduce the value of the benefits provided, it must seek to do so in collective bargaining.

Position of the Company

16. The Company submits that a co-pay arrangement was already in place prior to certification.

17. It submits that its position during bargaining was clear, that it intended to integrate the Brampton plan with the same plan which applies to all other Company unionized employees.

18. The Company informed the Union during bargaining that the employees would be required to pay the same percentage of the costs they were paying at the time, to which the Union agreed.

19. The Company erroneously maintained the former benefits plan. When it realized its mistake, the new benefit plan agreed to during bargaining was implemented.

20. The bargaining history shows that co-pays were not a source of disagreement. The disagreement was with respect to short term disability benefits.

21. The bargaining history, set out at paragraphs 11-44 of the Company brief, clearly shows that the Union accepted the Company's position that existing co-pays would continue. It is highly unlikely that the Company would have accepted to pay the full costs of benefits without any counterpart or discussion.

22. The Company submits that if the Union wishes to make changes to the agreement concerning benefits, it should be done through collective bargaining.

Analysis and Decision

23. Both Parties accept that any change to the benefits agreement should be done through collective bargaining. This will occur very shortly, as the current collective agreement ends in September, 2024.

24. The Company accepts that it will not attempt to impose a co-pay prior to May 2023.

25. At issue, then, is whether a co-pay should be in place from May 2023 until the end of the current agreement.

26. I will examine the issue through the following lenses:

- a) Status Quo Ante;
- b) Collective Agreement;
- c) Plan Documents;
- d) Bargaining History;
- e) Status from May 2023

a) Status Quo Ante

27. As a starting point to the analysis, it is important to set out the situation pertaining to medical benefits prior to union certification. It does not appear contested that non-unionized employees at the Brampton Plant had two options for medical benefits. Option 1 was a basic plan which was mandatory, which did not have a co-pay. Option 2 was an enhanced plan which was optional, which did have a co-pay. The then-existing Plan and Insurance Presentation makes this clear (see pages 16-17 Manulife Group D non-unionized employees, Company document, Canada Benefits Presentation, Tab 4, Union documents, options and costs).

28. It is noteworthy that the basic plan was the default plan, with Option 2 not even being available until at least 20 employees and 75% of total employees had chosen this option (see eligibility for non-mandatory benefits, p. 110 Manulife Policy, Company documents).

b) Collective Agreement

29. The Collective Agreement, effective October 1, 2021, sets out that employees will be enrolled in the Company benefit plan according to certain terms:

Article 13 Benefits

13.1 Employees will become eligible to participate in Alstom's group benefit plan on the first day of the month following the completion of their probationary period. A summary of the benefits is provided at Schedule "B" of this Agreement.

Summary of Benefits

The following outline represents a summary only of the Group Insurance coverage available to employees covered by this Agreement as of January 2021. Rights and Benefits are governed by the terms of the Group Insurance Policy, Plan Document or Plan Text providing for the Group Benefits.

Life Insurance	
Life Insurance Basic coverage	Employee: 1.5 x annual salary Spouse: \$10,000 For child: \$5,000
Short Term Disability	
Waiting period	Five (5) days if absence if for an illness. None if due to an accident.
Coverage amount	66 2/3 weekly salary up to \$700 per week
Period of Coverage	26 weeks
Coverage Cease	Age 65 or retirement
Long Term Disability	
Coverage Begins	After 26 weeks of short-term disability
Coverage Amount	66.7% of Monthly salary
Maximum Benefit	\$3,000 per month
Coverage Ceases	No longer disabled; death; retirement; age 65
Medical - Mandatory	
Hospitalization	100 %
Care out of Province – Emergency Treatment	100%, \$5,000,000 lifetime maximum
Prescription Drugs	90%
Rehabilitation (Detoxification clinic)	\$80/day, \$2,500 lifetime maximum
Paramedical – Per Person	
Nursing Care	Reimbursed at 100% / Maximum \$10,000 per year
Chiropractor Osteopath Naturopath Psychologist Podiatrist	Reimbursed at 90% / Maximum \$500 per year for all services combined (including x-rays)

Acupuncturist	
Audiologist Speech Therapist Occupational Therapist Physical Therapist Homeopath	Reimbursed at 90% / Maximum \$1000 per year for all services combined
Massage Therapist	Reimbursed at \$15 per visit / Maximum \$300 per year

(underlining added)

30. The Collective Agreement, at the very least, makes clear that the rights and benefits are set out in the Group Insurance Policy, Plan Document or Plan Text provided for Group Benefits. Schedule “B” on its face, is merely a summary of benefits, and employees are directed to the Policy, Plan Document and Text for definitive information.

c) Plan Documents

31. Prior to certification, non-unionized employee medical benefits were provided under an insurance contract between Alstom (the “Policyholder”) and Manulife, the insurer. Manulife takes care to set out that the Policyholder is responsible for the collection of any employee contributions, that premiums are paid for by the Policyholder and in the event of cancellation of the contract, it is the Policyholder which remains liable for any unpaid premiums (see pp. 111-113, Manulife Plan, Company documents).

32. The situation did not change to any great extent following union certification. Brampton Unionized Employees were now governed by Plan G and categorized as “301”, when previously they had been categorized as “101”. Alstom, as Policyholder, remained responsible for the collection and payment of premiums:

Employee Contributions

Manulife Financial is not responsible for the collection of any employee contributions required for insurance under this Policy. However, the Policyholder may not require any contribution in respect of a person's insurance under any Benefit while the corresponding premium is being waived

Amount of Premium

The amount of premium payable by the Policyholder on each premium due date will be the aggregate of the amounts, including any retroactive

premium adjustments, payable in respect of each person insured on that date.

Premium Due on Termination of Policy

The Policyholder shall remain liable for all premiums due and unpaid on the date this Policy terminates...

(pp. 127-129, Manulife Plan, Company documents).

33. It is important to note that in neither of the two Manulife contracts, pre and post certification, have I been directed to any provision which sets out a co-pay obligation for employees for medical and para-medical benefits. Indeed, the provisions which I have been directed to indicate that it is Alstom which is responsible for the payment of premiums. That is not to say that a co-pay obligation cannot exist. However, the Policy, Plan Documents and text indicate that Alstom is responsible and any co-pay obligation would have to be found elsewhere.

34. In 2023, the insurer changed from Manulife to Sunlife. Once again, it is Alstom who as “titulaire” is responsible for the collection and payment of premiums:

Paiement des primes

Les primes sont exigibles tant que le contrat est en vigueur. La Sun Life n'est tenue d'accepter les versements de primes que s'ils sont effectués en une seule fois par le titulaire, à qui incombe l'entière responsabilité de ces paiements... (p. 31-1, Plan Sun Life, Company documents).

35. In the current insurance contract, I have not been directed to any provision which sets out a co-pay obligation for medical benefits. Indeed one provision, for Short Term Disability, does make explicit that employees are entirely responsible for these costs:

L'employeur a indiqué que ce régime invalidité est un régime entièrement à la charge des salariés, ce qui signifie que toutes les primes exigibles sont payées par les salariés qui sont couverts par le régime. Par conséquent, les prestations d'invalidité ne sont pas imposables (p. 81, Plan Sun Life, Company documents).

36. No such provision, whether partial or full, exists for medical or para-medical benefits.

37. A review of the Policy, Plan documents and text does not reveal any clear obligation for an employee co-pay for medical and para-medical benefits. The documents do set out that it is the Company who is responsible to the Insurer for the collection and payment of premiums and it is the Company who is responsible for any unpaid premiums at the time of termination of the insurance contract. The latest Sun Life contract, does have an explicit indication that employees are solely responsible for the payment of STD premiums, an indication wholly lacking for medical and para-medical benefits.

38. The Company has argued that there is a clear benefits provision in the collective agreement and that I must simply apply it. If that were the case, I would agree with the position of the Company. However, the collective agreement merely refers the parties to the insurance Policy, Plan documents and text. The Company cites NAV Canada v. CATCA 77 CLAS 364 for the proposition enunciated by Arbitrator Swan that pension documents may be referred to shed light on eligibility for LTD benefits. I agree that pension or insurance documents can shed light on benefit entitlements. Unfortunately, a review of the insurance documents here, unlike in the Nav Can matter, does not provide a clear answer to the issue of co-pays.

d) Bargaining History

39. The Company notes that extrinsic evidence in the form of bargaining proposals and agreements reached during negotiations may be used as an aid to interpret agreements. It cites Canadian Labour Arbitration, 5th Edition at 3:78, where the authors note: “Of course, evidence of such negotiation history must not only be relevant, but most importantly, to be relied upon it ought to be unequivocal. The context in which such negotiations took place may also be relevant.”

40. Both sides have presented extensive documentary evidence of the bargaining history. This history was undoubtedly relevant and certainly provided needed context. Whether the history is unequivocal or not will now be reviewed.

41. The Company argues at paragraphs 9-10 of its Brief that co-pays were never a point of disagreement and that the only issue was with respect to STD benefits. The Union argues that co-pays were never discussed.

42. In my view, it is highly unlikely that an obligatory co-pay for all employees, when a co-pay for medical and para-medical benefits had not previously been required, would not have engendered very significant disagreement from the Union. This is particularly true in the context of a first collective agreement when the Union is attempting to establish its bona fides with its new members. As discussed in the following section, the immediate reaction of the Union in May 2023 to the co-pay deductions made to their members, and the subsequent reimbursement of these monies by the employer is not indicative of an agreement, nor is the grieving of the later decision to institute co-pay deductions from May 2023 forward.

43. The Company further argues that any initial lack of agreement by the Union was resolved during the negotiations, with an express agreement by the Union to co-pays (see paragraphs 52-58, Company Brief).

44. In the review of the bargaining history, much was made by both sides of a statement by the Company representative in a global offer that “employees would be required to pay the same % of the costs as they are paying right now” (see Tab 13, Company documents). The Company takes the position that they were telling the Union that co-pays would be a fixture of the new agreement. The Union takes the position that employees are not obliged to pay a co-pay now, and that situation would continue under the new plan.

45. In my view, the statement is ambiguous. The reference to “same % of the costs” could have been understood to be a reference to the dental plan, on which there were co-pays. It could have been understood to mean that no co-pays for basic medical benefits would continue. I do not find that the statement resolves the issue of whether co-pays were agreed to by the Union.

46. With the above interpretation, the August 9, 2021 question put by the Company to the Union: “Benefits-are you accepting the benefits proposals as tabled by Alstom?” (see Tab 29 Company documents) again does not resolve the underlying issue, as the Union has not understood that the Company is requiring a co-pay.

47. Nor do I accept that the Union statement: “You will notice that we have accepted the benefits which are less than they would get today” (Tab 31(b), Company documents) is indicative that the Union has accepted co-pays. It equally well could be a reference to the Company insistence and the eventual Union acceptance that STD benefits would be lowered.

48. The Union has strongly argued that the January 2021 Benefits Summary documents referred to by the Company during bargaining (see Union Tabs 5 and 11) do not contain a mandatory co-pay and that it had no reason to believe that the Company was seeking such a contribution.

49. The Company has invoked the decision of Arbitrator Sims in Global Edmonton and Unifor Local M-1, 2015 CarswellNat 8138, in which he explored the equities between the parties of the interpretation of an ambiguous provision:

“As to the equities between the two parties, before ratification the Union appreciated the significance if the Article did apply province-wide, and knew of their having acknowledged the Employer’s assertion that it was not to affect Edmonton’s hours of work. The Employer had no notice of the Union’s view. The Union could have sought to clarify the issue with the Employer, but chose not to. It chose instead to assert its views right after ratification, once the opportunity to resolve the matter at the bargaining table had passed.”

50. The Company argues that, if there was any doubt, the Union had an obligation, pursuant to the Sims decision, to bring the issue forward. In my view, the same could be said for the Company. The exchange at Tab 10 with respect to modifications to the benefit provisions illustrate the Union’s concerns about any lessening of the benefits:

Benefits: Modification from the non-unionized plan to the unionized plan for the STD (Non union plan: employee with less than 1 year, 100% first week, 70% for 25 weeks; employer with 1-4 years of service, 100% for 10 weeks, 70% for 16 weeks; employee with 5-9 years of service, 100% for 18 weeks, 70% for 8 weeks; 10 years of service – 100% for 26 weeks); (Union plan: 66.7% of weekly earnings up to a maximum of 700\$ per week for a maximum period of 26 weeks).

Union: We cannot agree to this change, the basis of our demands being the way that they are was in relation to a benefit plan that was very good, if it is the intent of the company to cut those benefits once a collective agreement is in place, we cannot accept this.

Company: We are maintaining all of the other benefits, but we were clear at the outset that the STD plan had to be in line with the other unionized plants.

Union: Will need to discuss, our whole position on benefits was no change, if there is to be change in this manner, we will have to look at improvements on other parts.

Company: We can further discuss, but as explained all along, the STD is an issue.

51. I have carefully reviewed the bargaining history many times. In my view, both sides can legitimately and in good faith find evidence to support their positions. What is clear, however, is that the bargaining history is not unequivocal. As such, the bargaining history is not determinative of the issue of co-pays.

e) Status from May 2023

52. As noted above, in May 2023, the Company deducted a co-pay from employees, going back to January 2023. The Company took the position that this was an administrative error and reimbursed the deductions.

53. I agree with the Company that an employer is entitled to correct a mistake without offending the principles of estoppel (see **CROA 3054**). This, however, does not address the initial issue of whether the co-pay should be in place or not.

54. In May 2023, the Company began deducting co-pays from employees going forward, but did not seek co-pays from employees between the signing of the collective agreement in October 2021 and that time.

55. It is probable that the decision by the Company not to seek earlier deductions for co-pays was influenced by the particular administrative history concerning this issue. The lack of clarity between the Parties with respect to the benefits issue was undoubtedly exacerbated by the missing or incorrect Schedule B provided by the Company. Although the collective agreement was ratified in October 2021, the new collective agreement was initially provided without a Schedule B. When a Schedule B was provided in April 2022, it turned out to be the wrong Schedule B and did not apply the correct plan to the employees (Tabs 37-40, Company documents). It was only in February-March 2023 that the correct Schedule B was provided by the Company (see Tabs 41-42, Company documents).

56. It is noteworthy that the Union immediately contested the initial deductions of co-pays, which were reimbursed, and filed a grievance with respect to the new co-pays instituted in May, 2023.

57. A review of the various factors referenced above shows a weighting in favour of the Union position. The Status Quo Ante clearly shows that the starting point for negotiations was a mandatory regime without a co-pay. The Collective Agreement does not speak to a division of costs, but instead merely refers the Parties to the Policy, Plan Document and text. These documents do not directly address the issue of a co-pay, but do stipulate that the Company is responsible for the collection and payment of the premium. Nowhere does the Collective Agreement, or the Policy, Plan Document and text stipulate that the employees are responsible for a co-pay. The Bargaining History, in my view, is ambiguous, with neither Party clearly addressing the co-pay issue. The Status of the Co-Pay Issue, both before and after May 2023 favours the Union position. No co-pays were collected pre May 2023, an initial deduction was reimbursed and the latest deduction was immediately contested. It must be said that the Union position has been more consistent than that of the Company.

58. Based on the fact that pre-certification, there was no obligatory co-pay, there was never a clear agreement to institute a co-pay during the collective negotiations, and

neither the Collective Agreement nor the insurance documents require a co-pay, I find a co-pay agreement does not currently exist. The Company is not entitled to change an existing benefit provision outside the provisions of collective bargaining. Such bargaining will begin shortly.

D. If not, what remedy is appropriate?

59. The grievance is therefore allowed.

60. Given my finding that no agreement to institute a universal co-pay was in place, deductions made for a co-pay for medical and para-medical benefits since May 2023 must be reimbursed to employees, and no further deductions shall be made until the Parties decide otherwise.

61. I remain seized, should there be any issues of interpretation or application.

July 26, 2024

A handwritten signature in black ink, appearing to read "James Cameron", is written over a solid black horizontal line.

**JAMES CAMERON
ARBITRATOR**