

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

CASE NO. 5052

Heard in Edmonton, June 12, 2024

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

UNITED STEELWORKERS – LOCAL 1976

DISPUTE:

The alleged past practice surrounding the meal period time allowance at the Vaughan IMS Terminal in Vaughan, Ontario.

JOINT STATEMENT OF ISSUE:

On September 16, 2019, the Company issued a bulletin titled Productivity Expectations. Under the section for “Lunch Break” the bulletin states, “Lunch breaks will be 20 minutes, as referenced in job bulletins. In order to account for walking to and from lunch room/parking, employees may take 30 minutes ‘from wheel to wheel’, ie. from logout to login.”

On October 2, 2019, the Union presented an undated bulletin. Under the section “Lunch Period Toplift, TRB and Ground” the bulletin stated, “Your collective agreement stipulates a 20 minute lunch period. You are allotted up to 40 minutes for the lunch period. These 40 minutes are measured from the time that you log off from your Oasis/equipment until the time you log back in. Take this into consideration when you take your lunch/rest period...”.

Union Position

The Union takes the following position:

- The Union contends that there has been an established past practice concerning the meal period time allotted for 40 minutes at Vaughan IMS, and therefore contends this sets precedent and should be adhered to.
- The Union believes a reduction to 30 minutes places additional stress on employees and is not a long enough period to log off, walk from equipment, eat lunch, return to their equipment and long back on.

Company Position

The Company cannot agree with the Union’s contentions.

It is the position of the Company that there is no established past practice between meal periods at the Vaughan IMS Terminal. Company records indicate that the bulletin the Union relies on for support was issued in April of 2015. Since then, another bulletin was issued in July of 2016

indicating a 20– minute meal period. The current bulletin issued on September 16, 2019, provides for a 30– minute meal period.

The Company maintains the current bulletin exceeds the requirements outlined in the Collective Agreement. Accordingly, the Company maintains no violation of the Collective Agreement and respectfully requests the Arbitrator to dismiss the Union’s grievance in its entirety.

For the Union:
(SGD.) N. Lapointe
 Staff Representative

For the Company:
(SGD.) D. Pezzaniti
 Director, Labour Relations

There appeared on behalf of the Company:

L. McGinley	– Director, Labour Relations, Calgary
S. Scott	– Manager Labour Relations, Calgary
S. England	– Observer, Manager, Labour Relations, Kansas City
A. Harrison	– Manager, Labour Relations, Calgary

And on behalf of the Union:

N. Lapointe	– Staff Representative, Montreal
T. Lamont	– Witness, Toronto
A. Simpson	– Witness, Toronto
L. Costanzo	– President, Unit 951, Toronto
N. Lapointe	– President, Local 1976, Montreal
E. Zuchotzki	– Vice President, District 3, Local 1976, Edmonton

AWARD OF THE ARBITRATOR

Issue & Summary

- [1] The Union filed this Grievance, alleging a breach of Article 10 of the Collective Agreement, relating to the meal period at Vaughn Intermodal Terminal.
- [2] The issue between the parties is what paid time period is allowed for employees at the Vaughn Intermodal Terminal to eat their lunch. The Union has alleged the Company is estopped from changing its past practice of providing a 40 minute paid lunch period, “wheel to wheel”.
- [3] For the reasons which follow, the Grievance is upheld, in part. While the Company was estopped from changing its past practice of allowing a 40 minute lunch period, that estoppel was only acting until January 1, 2023, when the Collective Agreement to 2022 expired and the Union was given the opportunity to negotiate changes to Article 10.

Analysis and Decision

[4] It is not disputed that Article 10 of the Collective Agreement between the parties allows for a 20 minute paid lunch break. It states:

Article 10 – Meal Period

10.1 When a meal period is allowed, it shall be after the fourth hour and before the sixth hour after starting work unless otherwise locally agreed.

10.2 If the meal period is not afforded within the allowed or agreed time limit and is worked, the meal period shall be paid for at the straight-time rate and twenty minutes with pay in which to eat shall be afforded at the first opportunity.

10.3 Employees required to work less than four hours beyond their assigned hours of service shall be allowed twenty minutes with pay in which to eat after completion of their extra assignment. Employees required to work more than four hours beyond their assigned hours of service shall be allowed twenty minutes with pay in which to eat prior to commencing their extra assignment.

10.4 Except as otherwise provided, meal periods shall be of one hour duration. Practices in effect prior to the signing of this agreement shall continue until otherwise locally agreed.

10.5 On continuous shifts **twenty minutes shall be allowed for meal without deduction in pay.**

10.6 A twenty-minute meal period without deduction in pay shall be allowed Stores Department employees and shop clerks employed at Weston and Ogden Shops.¹

[5] Employees log off and log on through a computer system when they start and end their lunch break, so this specific time period can be audited.

[6] While on its face Article 10 appears straightforward, there are three “Productivity Expectation” Bulletins prepared by the Company which are at issue in this case, leading to the argument of estoppel raised by the Union.

[7] Considering these Bulletins in reverse date order, the first Bulletin is dated September 16, 2019 (the “September 2019 Bulletin”). It is titled “Productivity Expectations”. The September 2019 Bulletin has a notation at the top of the document, for the date of the Bulletin and when it was posted.

[8] The September 2019 Bulletin stated:

**VAUGHAN INTERMODAL TERMINAL
INTERMODAL OPERATING BULLETIN # ON-VGN-13-2019**

¹ Emphasis Added.

SUBJECT: Productivity expectations

As we approach peak season, we must prepare ourselves for increased demand and heightened service requirements at our terminal. As part of that preparation, **we are highlighting some basic productivity expectations of employees**, which is a vital step in maximizing the efficiency of our operation. Please familiarize yourselves with the following standards and ensure compliance going forward:

Shift Start

- Dressed and ready for the job brief, at the start of your shift.
- Login to Oasis and ready to move no more than 15 minutes after shift start time.
- First productive move no more than 20 minutes after shift start time

Lunch Break

- **Lunch breaks will be 20 minutes, as referenced in job bulletins. In order to account for walking to and from lunchroom / parking, employees may take 30 minutes ‘from wheel to wheel’, i.e. from logout to login.**
- In OASIS, press F6 and select “Scheduled break”. System will log you out.
- First productive move should be no later than 35th minute after log out for lunch.

Shift End

- Completion of last productive move will be no earlier than 10 minutes prior to end of shift.
- Time entry: All employees must record their time on employee station at the end of their shift, every day.

Oasis use

- **All** employees are required to be logged into Oasis while working in the terminal, regardless of job duties.
- Oasis to be used to record all start / stop events.
- + Login at start of shift / logout at end of shift. Log in after lunch.
- + All irregular activities while working should be logged with Oasis comments (equipment change / washroom break etc).
- + Staff on ground truck to inform SOY about their times, as mentioned above, until tablet’s are installed on ground trucks.²

Thank you for your cooperation, sincerely, Vaughan Management Team.

[9] The Union filed this Grievance against the September 2019 Bulletin. The Union alleged the Company has a past practice of providing a 40 minute paid lunch to its members. It argued the Company is estopped from changing that practice, and reducing that time period to a 30 minute time lunch break. It further argued 30 minutes was insufficient time and was causing stress to its employees.

[10] To support this past practice, the Union relied on an undated Bulletin, which was found posted in a building known as the “annex”, which was accessible to supervisors and manager. It also relied on the evidence of Christopher Simpson (a retired Union official) and Tim Lamott (an employee and former supervisor). The Company provided evidence

² Emphasis Added.

this undated bulletin was created in – and last printed – in April of 2015 (the “April 2015 Bulletin”).

[11] The April 15th Bulletin stated:

To all USW – Vaughan Intermodal

We are in the service industry and we are accountable to provide safe and efficient service to the customers and truckers served by Vaughan Intermodal Terminal staff. The customers and truckers depend on us in making their companies successful.

Start of Your Work Day

After your shift start briefing is completed, you must immediately go to your post, perform your circle checks, if appropriate, log in and begin your work day. There is to be no loitering whether it's chatting, having a smoke, etc. Failure to follow these guidelines will be dealt with accordingly, unless you were instructed otherwise by supervisory staff.

Lunch Period Toplift, RTG and Ground

Your collective agreement stipulates a 20 minute lunch period. You are allotted up to 40 minutes for the lunch period. These 40 minutes are measured from the time that you log off from your Oasis/equipment until the time you log back in. Take this into consideration when you take your lunch/rest period. Any employee exceeding this amount without supervisory approval is counter-productive and will be dealt with accordingly. Vaughan employees must remain on the Vaughan Intermodal Terminal property during their lunch/rest periods.

Lunch period Cranes

Your collective agreement stipulates a 20 minute lunch period. You are allotted up to 40 minutes for the lunch period. These 40 minutes are measured from the time that you log off from your Oasis/equipment until the time you log back in. The lunch period will begin 4 hours after the initial time you login to Oasis. Take this into consideration when you take your lunch/rest period. Any employee exceeding this amount without supervisory approval is counter-productive and will be dealt with accordingly. Vaughan employees must remain on the Vaughan Intermodal Terminal property during their lunch/rest periods.

Don't forget to log in and out from Oasis. It's mandatory for all employees who use Oasis.³

End of Shift

Employees are required to log off from the Oasis equipment at the end of each shift. Employees must not log out of the equipment prior to 10 minutes of the completion of the shift.

Vaughan Management

³ Emphasis Added.

[12] A third Bulletin was filed into evidence by the Company. Its evidence was that this document was created in its computer system and last printed in July of 2016 (the “July 2016 Bulletin”). It had no other evidence regarding if or where this Bulletin was posted, or how it was otherwise brought to the attention of employees.

[13] The July 2016 Bulletin stated:

Expectations For Employees Working at Vaughan Terminal

1. Employees must arrive for work in time to be “Dressed and Ready” the moment their shift is scheduled to begin. At the start of the shift employees (manual) must be in the lunch room ready for the daily job briefing.
2. Job briefing is not to exceed 5 minutes under normal circumstances and employees must be out the door on their way to trucks/machines no later than 6 minutes after the start of shift.
3. Productivity and safety must go hand and hand. Employees are expected to be highly productive in the performance of their duties while being vigilant to prevent accidents and injuries.
4. **Lunch time is 20 minutes. Employees must be on their way back to their trucks and machines as soon as the 20 minutes is up.**
5. Employees are expected to report for their assigned shifts. Booking sick to obtain time off is not acceptable. Booking sick is for bona fide illness only and abuse of the booking sick provisions will result in investigation.
6. Canadian Pacific employees are expected to treat each other, truck drivers, customers, contractors and any other person they contact during on-duty hours, with utmost respect in accordance with Policy 1300 Discrimination and Harassment. Violation of this policy or any other of these expectations could result in the most severe of consequences.⁴

Jan Polley

Director Intermodal Operations

Vaughan Terminal

[14] The Union also relied on the evidence of a former Union representative, Christopher Simpson, and provided his evidence by Affidavit, which evidence was objected to by the Company. It also relied on the *viva voce* evidence of Mr. Tim Lamott, a Union member and former supervisor.

[15] Mr. Lamott’s evidence was that he is going into his 15th year working for the Company. He also acted as a supervisor between 2011 and 2018. Mr. Lamott described the process

⁴ Emphasis Added.

of what is involved in parking a machine and going for lunch, and whether the time allowed was sufficient.

- [16] Mr. Lamott was unsure of the exact period the 40 minute lunch period was put into place, but stated that - at least since he started in 2010 (until the September 2019 Bulletin) – there has been a 40 minute lunch period provided by the Company for Union members, “wheel to wheel”. On his evidence, the practice has existed for 19 years. He did not recall if the April 2015 Bulletin to that effect was posted anywhere, as he does not work in the “annex”, where the Bulletin was found. On cross-examination, he admitted that while he was a supervisor, he did not always look at what bulletins were on the board and that if a bulletin was posted in the “annex” he “possibly” could be aware of it. He confirmed he was not aware when the April 2015 Bulletin was posted on the bulletin board in the annex. He also gave evidence that as supervisor, he did not “keep tabs” on when employees logged in after lunch. His evidence was the break time was not being actively managed by management, and as long as it was within reason it was not questioned. He also pointed out that if the way into the lunchroom was blocked by equipment, there was an opportunity for employees to make a note of that in the computer system.
- [17] The Union did not have any evidence of when the April 2015 Bulletin was originally posted, other than the evidence of Mr. Lamott that 40 minutes was provided by the Company for a lunch break, at least since 2010, when he started.
- [18] Under the CROA Agreement, Arbitrators are entitled to “make such investigation as he/she deems proper...” to resolve the issues in dispute.⁵ This Arbitrator asked the Company if there was any evidence the July 2016 Bulletin was ever communicated to employees. The Company’s information was that the metadata for the creation of the July 2016 Bulletin demonstrated it was created at that point in time and that it was “printed”.
- [19] The Company did not have any evidence of whether – or where – the July 16 Bulletin it was posted or how it came to the attention of employees, given the passage of time.

⁵ Item 13.

- [20] This Arbitrator also asked how employees generally became aware of bulletins. In answer, the parties stated that bulletins were posted in the lunch room, and in the “annex,” or “depot” on bulletin boards in both locations.
- [21] The Union also filed the Collective Agreement for the period 2018– 2022; and the Award of Arbitrator Ready in settling the terms of the next Collective Agreement, covering the time period post December 31, 2022, which demonstrated no change to Article 10.

Arguments

- [22] The Union argued the elements of estoppel have been met. It argued the April 2015 Bulletin established a past practice of a paid 40 minute lunch period, which was supported by Mr. Lamott’s evidence. It argued the Union relied on this past practice to its detriment when it did not attempt to negotiate a longer lunch period into the Collective Agreement at an earlier date.
- [23] It was the position of the Union that it would now be prejudicial for the Company to change that practice, during the closed period, when the Union cannot bargain Article 10. It argued the Company is therefore estopped from changing that past practice in the September 2019 Bulletin, reducing the paid time to 30 minutes.
- [24] The Union also argued that 30 minutes was not enough time for employees to travel to the lunchroom, remove their clothes, wash up, eat their lunch and reverse the process.
- [25] The Company argued that it audited the time it takes Union employees to walk from their equipment in preparation for this hearing, and that time was under two minutes. It therefore challenged the Union’s comments regarding the time needed before and after eating.
- [26] The Company pointed out that the September 2019 Bulletin still provided *more* time than the parties had negotiated in the Collective Agreement for a paid lunch break, as it provided *30 minutes* wheel to wheel, rather than the 20 minutes referenced in Article 10. The Company argued that – whatever past practice may have been established through the April 2015 Bulletin – that practice was brought to an end with the July 2016 Bulletin and it was *this* Bulletin that was acting at the time the September 2019 Bulletin was

issued. It also argued that the July 2016 Bulletin was not challenged by the Union when issued and it is too late for it to make that challenge now.

Analysis and Decision

- [27] As a preliminary point, the Union's position that 30 minutes is not a sufficient time for a lunch break for this group of employees is an issue for bargaining. It is not a relevant consideration for the issue to be resolved. That issue is whether an estoppel has been created that would prevent the Company from enforcing its strict rights under the Collective Agreement.
- [28] As a second preliminary point, the Company argued the information of Mr. Shipton, who was in Switzerland and whose information was given through a letter, should not be considered, as the Company did not have the opportunity to cross-examine Mr. Shipton.
- [29] Mr. Shipton does not provide any further relevant evidence than that provided by Mr. Lamott: that the lunch period was 40 minutes; and that it was not "managed" or monitored.
- [30] Therefore, even if Mr. Shipton's evidence is disregarded, that same evidence exists through Mr. Lamott, whom the Company *did* have the opportunity to cross-examine.
- [31] The four elements of estoppel are not disputed⁶. To create an estoppel, there must be:
- a. A clear, unequivocal representation or promise, by words or conduct;
 - b. Demonstrating an intention that the representation would be relied upon;
 - c. Actual reliance;
 - d. To the detriment or prejudice of the party receiving the representation.
- [32] I cannot agree with the Company that the July 2016 Bulletin was active when the September 2019 Bulletin was developed.

⁶ Brown & Beatty, ss 2:47; see also the application in *DMW Electrical Instrumentation Inc. v. IBEW, Local 530* 2012 CarswellOnt 17510

- [33] It cannot be assumed from the fact the July 2016 Bulletin existed on the Company's system and was "printed", that it was also "posted" and communicated to employees, or that it informed the activities of the employees between July of 2016 and September of 2019. The evidence is simply lacking for that argument. Further, that position is inconsistent with the oral evidence that *does* exist, which is that of Mr. Lamott, that the practice of a 40 minute lunch period was followed until the September 2019 Bulletin.
- [34] Turning to the April 2015 Bulletin, estoppel requires there be a clear, unequivocal representation. I am satisfied the Union has met that requirement. The Union provided a copy of the Bulletin in evidence. It was found in the "depot" on the bulletin board (one of the places where such notices were posted). The Union also relied on the oral evidence of Mr. Lamott that the practice was long-standing – at least since 2010 – that the time taken for lunch was 40 minutes and was not closely monitored.
- [35] Mr. Lamott's evidence was credible and was not shaken on cross-examination. I find it persuasive, such that the 40 minute lunch period was in place as far back as 2010. That practice was not only dependant on the April 2015 Bulletin, but that Bulletin is a clear representation of the practice, at least from that date.
- [36] I am satisfied the elements of estoppel have been established in this case:
- a. In the April 2015 Bulletin, the Company represented to the employees they could have 40 minutes "wheel to wheel" for lunch, *even though* the Collective Agreement only provided for 20 minutes in Article 10.
 - b. That is a clear, unequivocal deviation from the amount of time allowed in the Collective Agreement, which was 20 minutes;
 - c. The Company had an intention that the representation would be relied upon by the employees;
 - d. The evidence of Mr. Lamott has established there *was* actual reliance by Union members on that Bulletin; and
 - e. The Union is prejudiced, as it did not bargained for a greater lunch benefit while that practice was ongoing, given the Company's continuing practice.
- [37] Even if the July 2016 Bulletin *were* acting subsequently as the Company maintained, the July 2016 Bulletin does not clearly contradict the April 15 Bulletin to change that practice.

While the July 2016 Bulletin does state that there is to be 20 minutes for lunch, it also allows a vague and unspecified time for individuals to return to their equipment. The terms of that Bulletin would not prevent a 40 minute lunch period from continuing as per the April 2015 Bulletin, due to this lack of specificity.

[38] The Company's actions are not gratuitous, as argued. The practice is directly related to – and at odds with – an issue addressed in Article 10.⁷

[39] However, that does not resolve this Grievance. Even if an estoppel is established by the Union, the party creating the estoppel can give notice that it intends that practice to end. In *DMW Electrical Inv. V. IBEW*⁸, the Arbitrator noted:

In determining the duration of an estoppel, arbitrators continue to view equity as the guiding principle, even in determining what constitutes a reasonable period of notice to bring an estoppel to an end. The typical labour arbitration formulation proceeds on the premise that the party seeking to invoke the doctrine may have reasonably forgone opportunities to bargain an entitlement because of their reliance on the other party's representation that it would not enforce its strict legal rights. **Thus, arbitrators will frequently determine that an estoppel ought to remain in place pending a meaningful opportunity to negotiate. Typically, the jurisprudence indicates that an estoppel will remain in place for the duration of the collective agreement in force at the time notice of the discontinuance of the practice was given**⁹.

[40] While the Company has not reverted to its strict rights under the Collective Agreement of a 20 minute paid lunch period, I am satisfied the September 2019 Bulletin effectively gave notice to the Union that the prior practice of a 40 minute lunch period “wheel to wheel” was being brought to an end and that 30 minutes was the new “wheel to wheel” time for a paid lunch break. The Company was entitled to end its past practice with this notice, at the point when the Union next had opportunity to negotiate that provision.

[41] At the time the September 2019 Bulletin was issued, the parties were in the midst of a Collective Agreement which spanned the period between January 1, 2018 and December 31, 2022. That Agreement expired December 31, 2022. The Employer was therefore estopped from changing its practice at least until January 1, 2023. Any prejudice to the

⁷ See para. 44 of *DMW Electrical Instrumentation inc. v. IBEW, Local 530* 2012 CarswellOnt 17510 for this principle.

⁸ At para. 58.

⁹ Emphasis Added.

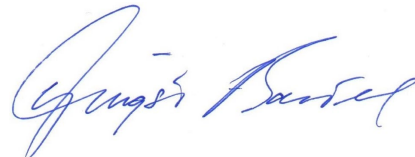
Union from that change ceased at that time, as the Union was then given an opportunity to try to negotiate a change to Article 10.¹⁰ Whether that provision was actually negotiated or not in the next round – or whether any changes were actually gained - the Union had the opportunity to bargain.

[42] The Grievance is upheld, in part. The following remedy is issued:

- a. A declaration will issue that the Company was estopped from changing its practice of offering a 40 minute lunch period “wheel to wheel”, until January 1, 2023.
- b. Any affected members are to be made financially whole, to that date.
- c. The determination of those amounts is to be remitted to the parties for their discussion and resolution.
- d. Should the parties be unable to agree, either party can approach the CROA Office and request that the issue be docketed for the next session at which this Arbitrator presides, for resolution.

I retain seized with jurisdiction to address the issue the appropriate remedy, if the parties are unable to agree. I also remain seized with jurisdiction to correct any errors and address any omissions, to give this Award its intended effect.

July 25, 2024



**CHERYL YINGST BARTEL
ARBITRATOR**

¹⁰ Ultimately settled by Arbitral Award dated March 5, 2024; the term of that agreement was from January 1, 2023 to December 31, 2024.