CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 5110

Heard in Edmonton, November 14, 2024

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Was the Company within its rights to assign a Duty Rest Period Rule ("DRPR") reset break to Locomotive Engineer Andrew Patterson of Medicine Hat, AB (the "Grievor") at the away from home terminal ("AFHT") on March 16, 2024 and should the Grievor have received a held away payment as a result of having been assigned a reset break at the AFHT.

JOINT STATEMENT OF ISSUE:

Engineer Patterson was placed on a DRPR reset break at the AFHT, Alyth, AB, on March 16, 2024. Mr. Patterson had worked 5 days since his last reset March 8-10.

The auditor denied the auto generated heldaway payment ($2,026.99).

UNION'S POSITION:

The Union's position has been thoroughly expressed through the grievance process. For all the reasons and submissions set forth in the Union's grievances, which are herein adopted, the following outlines our position.

The Union asserts the Company has violated of Article 40.02, as the Company has not provided a response to the Step 2 appeal. Further this is a violation of the Letter Regrading Management of Grievances & the Scheduling of Cases at CROA. These violations allow the claim as submitted under the provisions of Article 40.04 regardless of the position of the Company takes going forward. Despite the next step being pursued by the Union the Company still has a contractual duty to reply to grievances submitted and in not doing so prompts the payment of the claim. In accordance with the grievance procedure, the Union will be prepared to proceed only on the issues that have been properly advanced through the grievance procedure.

The Union asserts that the Company is in violation of the DRPR, and associated Application Document, by unilaterally and arbitrarily forcing employees to have their DRPR reset breaks at the Away from Home Terminal. The Union submits that these regulations are clear that reset breaks are intended to be scheduled and at the home terminal. The purpose of these breaks is to provide employees with the ability to balance their work and personal responsibilities while having two consecutive nights in their own bed. The Union asserts that an employee forced to

"reset" at the Away from Home Terminal is not on a reset break at all, as it is impossible for them to balance their work and personal responsibilities or get properly rested while being held at a Company rest facility away from their home. The Union submits that the Company's actions are contrary to the intention of the DRPR and will lead to an increase in fatigue. After being away from home for such an extended period, employees will have less time to balance their personal responsibilities and will have less time to obtain proper rest.

The Union asserts that in all instances but specifically this instance, the Company could have scheduled the reset break at the Home Terminal instead of calling Mr. Patterson for a tour of duty. Alternatively, there was ample time to return Mr. Patterson to the Home Terminal after his tour of duty and provide a reset break once he returned home. The Company's assertion in the Step-3 response that employee ought to monitor their hours to avoid being reset at the away from home terminal is absurd. The Company not the employee controls when these reset breaks are applied. The Union submits that the Company is not scheduling these reset breaks ahead of time and the employees are completely unaware of when they might occur.

The Union asserts that the Company is in violation of CCA article 8.09. This article is clear that, "The Company will make every effort to return Engineer to his/her home terminal as soon as possible." The Union asserts that Mr. Patterson was able to be returned home but the Company chose to hold him at the Away from Home Terminal.

The Union contends that Mr. Patterson did not require a Reset at the AFHT, that he was on day 5 of his 7-day period. Mr. Patterson had ample time to work home and have a Reset Break at the Home Terminal. Despite this, the Company chose to apply the Reset Break at the AFHT.

The Union contends that by denying the held away payment, the Company is in violation of CCA article 8.01. Employees in unassigned freight service held at other than the home terminal for longer than 10 hours without being called for duty will be paid at minimum freight rates from the time pay ceases on the incoming trip until the time the employee either takes control of their train or locomotives for the working trip, or when deadheading, actual departure from the terminal. The Union asserts that this language is deliberately all encompassing. There is no exception to held-away payment beyond what is described within this article (i.e. cases of wreck, snow blockage, or washouts on the assigned subdivision). Sub-article (3) provides that the decision, after 14 hours, to provide an automatic call or pay held-away at 18.75 miles will be at the Company's discretion. The Union submits that the Company elected to extend Engineer Patterson's rest at the Away from Home Terminal. Therefore, the Company made the decision not to enact the option of an automatic call and must provide the held-away payment as described. The Company in their Step-3 response states that an employee would not be eligible for this payment because they are unavailable to work similar to instances of personal rest or illness. The Union asserts that the logic of this response is inherently flawed. The Union submits that these are examples of when the employee makes themselves unavailable for work. Furthermore, personal rest does not negate held away payment. The Company, in their response, further attempts to put the onus on the employee to "track their hours of work so to avoid placing themselves in a circumstance where they may have to have their regulatory reset at an AFHT." The Union argues that the Company has unilaterally decided that the employee would not be available and instead held at the away from home terminal.

The Union reiterates that if an employee does not make themselves unavailable to work at the away from home terminal, then the provision of Article 8 would apply.

The Union asserts a violation of the *Canada Labour Code.* The Company is aware of the statutory freeze provisions while the contract has expired, and the parties are in negotiations. The Union submits the Company did not begin their practice of resetting employees at the Away from Home terminal until after the freeze period took effect.

The Union requests that the Arbitrator rule that the Company has manufactured the above-described violations and order that the Company cease and desist their practice of resetting employees at the AFHT, that they cease and desist the removal of (or refusal to pay) held away payments. Furthermore, the Union requests an order that the Company pay the heldaway earned by Engineer Patterson. The Union also seeks any further relief the Arbitrator deems necessary to ensure future compliance with the Articles and provisions in question.

COMPANY POSITION:

The grievance is without merit and should be dismissed, in its entirety.

In regard to the Union's contentions concerning the grievance responses, the Consolidated Collective Agreement article 40.04 is clear in that the remedy for failing to respond to a grievance is escalation to the next step in the grievance process. Based on the submission of the Union's final step grievance, it is also clear the Union acknowledges article 40.04 and has progressed to the next step of the grievance procedure. The Union has no valid claim to other or further relief.

There are no provisions in the Consolidated Collective Agreement or any other agreement between CPKC and the TCRC that address where, when and how DRPR reset breaks are to be assigned. The DRPR rules do not require that reset breaks happen only at an employee's home terminal. This is something that Transport Canada has made clear to both parties. The Company has the right to assign reset breaks to employees at the AFHT.

On March 16, 2024, the Grievor was assigned a reset break at his AFHT when it was determined that there was a risk that he would not be able to make it back to his home terminal prior to the end of his seven day scheduling window. This incident occurred less than two days after CPKC had received direction from Transport Canada to change its practices with respect to the way in which reset breaks were being assigned.

On the issue of held away pay, the Consolidated Collective Agreement does not require held away pay to be provided to employees on regulatory rest at their AFHT. Article 8.01(2) of the Consolidated Collective Agreement provides for an entitlement to Held Away pay only for employees who are available for work at a location other than their home terminal but who are not called for work by the company after 10 hours.

In order to be entitled to held away pay, an employee must be available for work. An entitlement to held away pay can only begin to accrue after an employee has taken all of their regulatory rest. The entitlement to a held away premium is premised on the fact that the employee is available to work but the company is not in a position to assign work to the employee. Held away pay has never been paid to employees who are unavailable to work as a result of being on a regulatory rest break.

It is well established that crew members who are unavailable to work once at their AFHT for reasons such as illness are not entitled to held away pay for the period they are unavailable to work. There is no reason that the same rationale should not be applied to reset breaks. It is not a premium that is triggered for employees not permitted to work pursuant to the DRPR rules.

There has been no breach of Article 8.09 as this provision does not apply when employees are on a regulatory mandated rest break.

The TCRC's allegations that the Company has breached the statutory freeze provisions of the Canada Labour Code have already been assessed and rejected by the Canada Industrial Relations Board.

Each case where employee assigned a reset break is fact specific and not necessarily representative of what may or may not be permissible in other cases.

The Company maintains that there is no violation of the Collective Agreement or DRPR and requests that the Arbitrator dismiss the Union's grievance.

For the Union:
(SGD.) G. Lawrenson
General Chairman LE-W

For the Company:
(SGD.) F. Billings
Director, Labour Relations

There appeared on behalf of the Company:

A. Cake	– Manager, Labour Relations, Calgary
D. Zurbuchen	– Manager, Labour Relations, Calgary
A. Harrison	– Manager, Labour Relations, Calgary

And on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
J. Hnatiuk	– Vice General Chairperson, CTY-W, Calgary
G. Lawrenson	– General Chairperson, LE-W, Calgary
D. Fulton	– General Chairperson, CTY-W, Calgary
C. Ruggles	– Vice General Chairperson, LE-W, Calgary
D. Psichogios	– General Chairperson, CTY-E, Montreal

AWARD OF THE ARBITRATOR

Analysis and Decision

Background

[1] The parties have agreed to a comprehensive JSI, reproduced above, which has set out many of the arguments. This Award will not repeat those arguments in detail given those efforts.

[2] As a preliminary point, certain of the arguments made in the JSI relate to an alleged violation of the "statutory freeze". The parties already have a dispute on that issue which is currently pending before the CIRB. Referring to that issue in the JSI does not clothe me with jurisdiction to also address that issue.

[3] Fatigue management is a sensitive topic in this industry, and a contentious issue between the parties. This was discussed historically in *CP Railway v. TCRC (Unassigned Pool and Spareboard Employees)* 2016 CanLII 53073.

[4] In November of 2020, Transport Canada revised its *Duty and Rest Period Rules for Railway Operating Employees* (short title "Duty and Rest Period Rules"; referred to in this Award as the "DRPR"; the "Rest Regulations" or the "Regulations"). These Regulations apply to railway companies and railway operating employees and "define the requirements related to the hours of work and rest periods for employees who are in positions designated critical to safe railway operations and are defined as employees in this rule": Section 2.2.

[5] The DRPR recognizes the responsibilities of both management and employees for ensuring employees report - and work - when they are "fit for duty". While developed in late 2020, the Implementation of these Rules was "phased in", with full implementation for freight operations not occurring until May 25, 2023[1].

The Grievance

[6] This particular dispute is part of a broader set of issues between the parties being litigated in the shadow of these Regulations. At issue between the parties broadly is whether a "reset break" – which is a new and longer two-day break provided for in the DPRP – is served at the Away From Home Terminal ("AFHT") or at an employee's Home Terminal.

[7] The Union described this as a "test case", noting there are multiple grievances which raise the same issues.

[8] While that is the broader issue, the issue in this Grievance is actually quite narrow: Did the Company breach Article 8.09 by not taking "every effort" to return the Grievor to his home terminal "as soon as possible"?

[1] Full Implementation for passenger operations does not occur until November 25, 2025.

[9] For the reasons which follow, the Grievance is upheld. As a remedy, the Grievor is awarded $2,000.

Collective Agreement Provision

Article 8 – HELD AWAY FROM HOME TERMINAL

Note: from 2018 MIS; Formerly article 11 LE West and LE East Article 16 CTY West and CTY East

8.01 UNASSIGNED SERVICE

(1) Employee in pool freight and in unassigned service held at other than home terminal longer than 11 hours without being called for duty will be paid minimum freight rates on the basis of the table below (Add one hour to the Heldaway and Automatic Call columns for Non Conductor-only territory). All time held in excess of 11 hours except that in cases of wreck, snow blockade or washouts on the subdivision to which assigned, Employees held longer than 11 hours will be paid for the first 8 hours in each subsequent 24 hours thereafter. Time will be computed from the time pay ceases on the incoming trip until the time the crewmember either takes control of their train or locomotives for the working trip, or when deadheading; actual departure from the terminal

(2) In lieu of the provisions contained in the foregoing paragraph, Employee in pool freight and in unassigned service working on a territory on which the Company has implemented conductor- only train operations, held at other than the home terminal longer than 10 hours without being called for duty will be paid minimum freight rates on the basis of the table below for all time held in excess of 10 hours except that in cases of wreck, snow blockage or washouts on the subdivision to which assigned, Employees held longer than 10 hours will be paid for the first 8 hours in each subsequent 24 hours thereafter. Time will be computed from the time pay ceases on the incoming trip until the time the crewmember either takes control of their train or locomotives for the working trip, or when deadheading; actual departure from the terminal.

(3) The decision to provide an automatic call or pay heldaway at 18.75 miles will be at the Company's discretion. The graphic below applies to Conductor-only territory. Add one hour to the Heldaway and Automatic Call columns for Non Conductor-only territory.

Hours of rest booked at AFTH	Heldaway Commences at AFHT – 12.5 mph	Automatic Call or Heldaway – 18.75 miles/hour
0	10	14
00:01-01:00	10	14
01:01-02:00	10	14
02:01-03:00	10	14
03:01-04:00	10	14
04:01-05:00	10	14
05:01-06:00	10	15
06:01-07:00	11	N/A

07:01-08:00	11	N/A
Mandatory rest*	10	14

Note: chart above applies on Conductor-only territory.
*In the application of this chart, this also applies to the Belleville Run Through Pool.

8.02 ASSIGNED SERVICE
Except in cases of wrecks, snow blockades or washouts on the subdivision to which assigned, employees assigned run held at away-from-home terminal awaiting their train delayed beyond the advertised time of departure will be paid for all time so held if more than 5 hours. Five hours or less not to count. If held over 5 hours, payment will be made on the minute basis at 18-3/4 miles per hour in passenger service and at 12-1/2 miles per hour in other service for each hour over 5 hours at the rate of class of service last performed. Payment under this clause will cease when employees are required to report for duty.

GENERAL
8.03 Except as otherwise provided herein, should employees be called for service after pay begins, held-away-from-home terminal time shall cease at the time pay begins for such service.
8.04 Except as otherwise provided herein, should employees be ordered to deadhead after pay begins, held-away-from-home terminal time shall continue until the deadheading employee actually departs.
8.05 Payment accruing under this Article shall be paid for separate and apart from pay for the subsequent service or deadheading.
8.06 For the purpose of applying this Article the Company will designate a home terminal for each employee in pool freight and in unassigned service.
8.07 Miles paid under the terms of this Article will not be included in calculating miles used for the purpose of regulating pool complement.
8.08 At locations identified by the General Chairmen, the Company shall supply the General Chairmen with a quarterly report of held away by Division, which will include specific examples of the held away issues. The appropriate General Chairmen, General Manager and AVP Network Transportation will meet in the interest of addressing same, at the request of the Union.
8.09 LE WEST APPLICATION - The Company will make every effort to return Engineer to his/her home terminal as soon as possible [emphasis added]

The Grievance

[10] The facts are not in dispute. The Grievor is employed as an LE for the Company. His home terminal is Medicine Hat, Alberta. His AFHT is at Alyth, in Calgary, Alberta. The Grievor is an LE based in the “West”, in “unassigned service”. Therefore Article 8.09 applies to him.

[11] The Grievor is part of what is referred to as an “over the road” crew. As explained by the Company, “over the road crews” “report for work at their home terminal, take a train to their AFHT, take the necessary rest and then wait in line for an assignment that will see

them operate a train back to their home terminal" (at para. 8). This entire period is referred to as a "crew cycle".

[12] The Grievor was called in straightaway service on March 15, 2024 at 16:30 on train 113-11 from Medicine Hat to Alyth, on train 113-11. He reported off duty at 04:40 March 16, 2024. The Grievor did not book any personal rest upon arriving at Alyth. Instead, the Company placed him onto his "reset break" at the AFHT. He was then called March 18, 2024 for train 100-17 at 09:20.The Grievor was at the AFHT for a total of more than fifty-three (53) hours. A "held away" payment of more than $2,000 was automatically generated by the Company for the time which the Grievor spent at the AFHT, but this payment was later disallowed by the Company's auditor.

[13] The Union grieved this result. It has argued the Grievor was owed a "held away" payment under Article 8 for the time he spent on his reset break at his AFHT. It also sought a "cease and desist" payment and requested any other relief this Arbitrator deemed fit.

The Duty & Rest Period Rules

[14] While the Rest Regulations do provide background and context to this Grievance, at its core, this Grievance involves a contract interpretation dispute over the meaning and application of Article 8 of the Consolidated Collective Agreement.

[15] It is therefore unnecessary to wade deeply into the complexities of the larger issues between these parties, but some consideration of the DRPR is required to understand and assess the positions argued.

[16] This is the first revision to the Duty and Rest Period Rules in many years. It places what are new limits to the length of time an employee can be on duty; increases the minimum rest periods between shifts; and has introduced a "reset break", which is a continuous period of time that employees are away from work. That "reset break" must include certain time periods.

[17] There is no doubt the DRPR will have a significant impact on this industry.

[18] In March of 2023 - prior to the full implementation of the DRPR for freight railways - Transport Canada issued an "Application Document". The first substantive provision of

the Application Document states that its “Purpose” was to “provide guidance in the application of the *Duty and Rest Period Rules for Railway Operating Employees (DRPR)*. That Document has commentary under certain sections, as well as “links” which lead to further commentary. The Company has argued this document has no “regulatory force”. This Grievance can be resolved without deciding this question, and the interplay between the Application Document and the Rest Regulations is one that can be left to be considered on another day.

[19] Part C of the Regulations refers specifically to “Duty and Rest Periods”. Section 7.1 stipulates that that “[a]n employee’s maximum duty period is 12 hours”. The “Application” section notes that this maximum time can be exceeded in certain situations, such as deadheading, and performing administrative duties. Section 8 defines the “minimum” rest period as 12 hours at a home terminal; or 10 hours at a home terminal that is remote, and also 10 hours when “in an accommodation, when not at the home terminal”. Part D addresses the requirement for a railway company to develop and implement a “Fatigue Management Plan”. There are also directions for how an employee is to ensure they are fit for duty. To serve that end, in this industry, there are “mandatory” rest periods and also periods of time when an employee may “book” personal rest. In the DRPR, a “rest” period is defined as the time between release by the railway company from all activity at the end of a duty period, and the time when the employee reports for duty at the time designated by the railway company: Section 3.1.

[20] Section 10.1 states that “*Freight railway companies shall provide a reset break that begins within any consecutive 7 days*”. Section 3 now defines a “reset break” as:

> a. for freight railways companies, a continuous period free from any duty period, that lasts, at a minimum, 32 hours and includes 2 periods of 8 hours undisturbed by the company that begin and end within the period between 22:00 and 08:00.

[21] While rest period are not new; “reset breaks” are.

[22] A “reset break” is a longer break away from work than a mandatory rest period.

[23] It is the Company who designates when an employee is to take their reset break, by their scheduling of that employee and by their forward planning.

[24] Given the limitations for service within a 7 day period, the Company considers there is a “window” between day 4 and day 7 when it must begin to forward a plan for employees to receive reset breaks. In its submissions, the Company described itself as “learning” how to implement these practices, and referred also to its learned understanding that it must consider an employee’s schedule as far back as day 3, to make its assessment.

[25] Section 6.3 provides that “Each employee shall have a designated home terminal”. In the Application Document it states:

> *Each employee will have a designated home terminal. The home terminal **will be used** in the application of minimum rest periods and reset breaks*.

[26] Confusion over that comment is then created in the same Application Document, by its commentary for Section 10.1. Under that Section, the Application Document speaks to the purpose of the “reset break”; “best practice” for having that break served at the home terminal and “special circumstances” which are described as “out of norm”, where that may not occur, which require “further dialogue”. *However* it also states:

> *TC will seek to clarify expectations regarding the location of the reset break in the rule when there is an opportunity to do so*.[2]

[27] If Transport Canada has yet to “clarify expectations”, regarding the “location of the reset break in the rule”, then it cannot be maintained that the DRPR itself includes a *mandatory* obligation to have the reset break served at the home terminal. This is the case, *even though* there are *other* provisions in the DRPR that would suggest that is its intent.

[28] For example, the “Maximum Cumulative Duty Period Times” in section 9 make specific reference to this intention. Those Times include exceeding 90 hours in any consecutive 7-day period. The “Application section states a railway cannot assign duty when that occurs *“…except to return to the home terminal for the purposes of a reset break*”. That same wording is also included under section 9.2 which refers to not exceeding “*192 hours in any consecutive 28 days*”. Again, the reference is then included

[2] Emphasis added.

in the application document of "…*except to return to the home terminal for the purposes of a reset break*." Article 9.3(a) stipulates that these maximum cumulative duty periods can be exceeded "…*if it will result in the employee returning to their home terminal for the purposes of a reset break*". In fact, under "Additional Guidance" for Section 9, it states "[*a]n employee can be assigned a duty period which may exceed the maximum cumulative duty period times, if it will result in the employee returning to their home terminal for a reset break*".

[29] The Application Document is somewhat of a "two-edged sword" for the Union's position. It both "supports" and "opposes" it. There is also a question of whether it clarifies the obligations in the Rule, or adds a level of confusion regarding those obligations.

The DRPR Assessment Committee of the Parties

[30] Given the DRPR had been phased in over thirty (30) months, the parties were aware the Rules were being revised and had the opportunity to prepare for that reality.

[31] On March 2, 2022, the parties agreed to create a DRPR Assessment Committee composed of union and management personnel, which Assessment Committee was to be created no later than January 1, 2023 (the DRPR Committee). That DRPR Committee was created and in fact began meeting In October of 2022.

[32] The Assessment Committee met thirty (30) times between October 2022 and October 20, 2023. The Union filed its minutes into this hearing. It is unnecessary to review those minutes in detail for this expedited hearing process. That there was a myriad of issues for the Committee to consider is evident. In its first meeting, the Minutes reflect that the Committee felt its dissolution may need to be deferred beyond that first agreed, which was in fact what it ultimately recommended.

[33] As a result of the work of this Committee, the parties entered into a "*temporary agreement to optimize crew management at the Away From Home Terminal which has been in place and successful since May 27, 2023*"[3] as was reported by the Committee in October of 2023. The terms of that temporary agreement are referenced in Operating

[3] Reporting letter of the DRPR Assessment Committee, dated October 20, 2023

Bulletin BCO-076/23, titled "*Duty & Rest Period Rules (DRPR) and Turn Service at the AFHT – Pilot*".

The CIRB Proceeding

[34] The parties began bargaining in the Fall of 2023. The parties were unable to finalize terms and a lockout occurred in the late summer of 2024. The parties were ultimately directed to participate in a binding interest arbitration process to settle the terms of their contract, with their Collective Agreement extended while that process is ongoing.

[35] That process has not concluded at the time of the writing of this Award.

[36] As noted above, it is the CIRB – and not a rights Arbitrator – who has jurisdiction to determine if the statutory freeze provisions have been violated. That is a live question at the CIRB, for these parties. Copies of submissions presented to the CIRB were filed into this proceeding and arguments made regarding intent for what the Union alleged was a change to the Company's practices.

[37] By including that issue in a JSI, a rights arbitrator does not then become "clothed" with jurisdiction to consider that same question.

[38] On July 29, 2024, the CIRB issued a "Bottom Line Decision" which refused to grant the "interim relief" on the AFHT issue. While the Company argued in the JSI that this meant the Union's unfair labour practice complaint had already been "assessed and rejected" by the CIRB, that is not an accurate statement. The "related" underlying unfair labour complaint has not yet been resolved by the CIRB and is pending. It is only the application for "interim relief" regarding the practices at the AFHT that was resolved.

[39] Part of the Board's reasoning for denying interim relief - and why this summary is relevant - was that the Board reasoned that a CROA Arbitrator could address issues such as concerns with time away from family or for attending to personal matters, with money compensation (at p. 4, 5). In this case, the Union also seeks *"…any further relief the Arbitrator deems necessary to ensure future compliance with the Articles*".

Arguments

[40] The Union argued the Company had breached both Article 8 and the intent of the DRPR when it had the Grievor serve his “reset break” at the AFHT.

[41] The Union noted the Company had committed in a May 2023 DRPR Assessment Committee meeting to using “best efforts” to ensuring Reset Breaks were served at an employee’s home terminal; that it followed that practice between March 2023 and March of 2024, to having Reset Breaks occur at AFHT’s. It argued this change has been “severely disruptive” to the Union and its members and created considerable uncertainty for employees’ expectations.

[42] It also argued Article 8.09 applied to this situation, and required the Company to use “every effort” to return this Grievor to his/her own terminal. It argued the Company did not comply with that obligation. It pointed out the Grievor had 11 hours and 44 minutes left in his “window” before a “reset break” would have been required and there were at least four trains he could have either worked or deadheaded on, to serve his reset break at his Home Terminal. It argued that the Grievor did not place himself in a position to be “unavailable” for work, as if he had booked personal rest, and that there are only limited exceptions in Article 8 where payment is not made when an employee is held away, none of which apply to this circumstance. It argued in Reply the Company has failed to explain why it was “compelled to apply a reset break”; how the held away pay ”was not a premium triggered for employees on a reset break at their AFHT; that the Company failed to take “best efforts” to adhere to best practices for serving reset breaks at the home terminal; that it failed to “make every effort” to return the Grievor home; that the Company has offered no justifications for its actions; that these are the circumstances where held away payments are triggered; that the DRPR neither contradicts or overrules the Collective Agreement; that the chart in Article 8 demonstrates the parties anticipates the interface of mandatory time off duty, and held away entitlements; that “reset breaks” are not “rest” and apply to all operating crews, not just “over the road” crews; that – while challenging – the Company was able to manage having reset breaks served at the Home Terminal between May of 2023 and March of 2024 and was aware of its obligations since 2020; that it is clear that reset breaks are to be served at home terminals; that the process for

doing so was introduced at the January 31, 2023 DRPR Committee meeting; that bargaining evidence regarding Company bargaining proposals supported its position; that "best practices" referred to in the DRPR cannot be superseded by a phone call to the Company by Transport Canada; and that unassigned freight crews are not provided schedules in advance. The Union also noted the lack of evidence for "crew availability" as a factor in this case. It argued if the Company truly knew that the Grievor could not complete his assignment in the 7-day window, it should have placed the Grievor on his reset prior to this assignment. It disputes the Grievor was on mandatory rest and – even if so – held away rates would start after 10 and 14 hours.

[43] The thrust of the Company's argument is that neither Article 8 nor the DRPR prohibit an employee serving his or her "reset break" at an AFHT. The Company points out the changes to the DRPR post-date the negotiation of Article 8; that the DRPR does not contain a *prohibition* against serving reset breaks at AFHT's but has added a "layer" of regulation; and that the Collective Agreement does not supersede the DRPR. Its position was that it is almost impossible to predict how long a crew cycle will be, given "distances between terminals, operating conditions, train traffic, the amount of personal rest taken by an employee at their home terminal and when an assignment at the AFHT becomes available"; that "this makes managing the weekly "reset break" under the DRPR a challenge" (para. 9); that its "practice" was to monitor employees who had gone for 4 days in a 7 day scheduling period without a "natural reset" and then to determine where to schedule the required reset break; that the relevant factors in that decision were the operational impact; manpower status; and "finding a window that includes two periods of eight (8) hours between 22:00 and 08:00"; that when a crew member "came off rest at their home terminal, and it then became clear that the line-up was such that they would not get called in time to complete another cycle, the Company would "extend the rest originally booked and make it a reset rest break", which allowed the reset to happen at the Home Terminal, but that "despite the Company's efforts, there were still instances where the Company had to assign reset breaks at the AFHT. The Company argued that "in some cases the employee had made an error and did not input their ticket correctly" into the CMA, and "in other cases" there was "no other choice but to send out a crew,

knowing the timing could be an issue, depending on how long it took the crew to complete the crew cycle" (at para. 15).

[44] There was no evidence either of those situations applied to this Grievor.

[45] The Company also argued it was contacted by Transport Canada ("TC") in March of 2024 to discuss complaints TC had received from employees regarding how reset breaks were being administered, where the Company *had* assigned a reset break at the Home Terminal, before sending out that employee on another assignment, when it did not believe there would be enough time for that employee to complete the next crew cycle. The Company argued it had applied the reset break retroactively to make that work, and its position was it was told by TC not to retroactively assign reset breaks after an employee had come off their personal rest. It was the Company's position that after this phone call, it revised directions that employees should not be assigned reset rest breaks after they had come off personal rest, so that an employee having served personal rest at the Home Terminal would be sent out on another assignment. It noted that in some cases this left enough time to return that employee to their Home Terminal within the seven (7) day scheduling window; and in other days there was not. The Company maintained this was the reason that reset breaks increased at the AFHT's, beginning on March 15, 2024, and that [t]hose responsible for applying the new directive within the Company's Operations Centre had to learn on the fly" and that a "judgment call" had to sometimes be made for "when it would be appropriate to send a crew home or reset them at the AFHT, based on information available at the time.

[46] No documentation was filed regarding this conversation; and no memos to file or written directions from Transport Canada were relied upon.

[47] The Company also argued that "over time" the Company "got better at managing reset rest breaks under the new rules and the number of resets at the AFHT started to decrease" and that it made further changes in April of 2024 to its scheduling practices, to further reduce the number of resets at AFHT's, including beginning to assess earlier in the cycle (on day 3) instead of at the day four (4) mark in the seven day scheduling window. It argued that "each decision to reset or not is based on the information available at that particular moment"; and that the Grievor would not be entitled to held away pay

under Article 8, given that a “reset break” has made the Grievor “unavailable” for work, in the same manner as if the Grievor had arrived at the AFHT and booked personal rest due to illness, so no held away pay was owing. In Reply, the Company repeated its positions and also argued the Application Document on which the Union relied was not binding and had no “regulatory force”; that the Company had not made any commitments regarding location for reset breaks; that there was no violation of Article 8 of the Collective Agreement as the Grievor was “unavailable” for work while on his reset and it resisted the Union’s request for a cease and desist order as there has been no “repeated or blatant” violation, given this cases is specific to the Grievor. It also made specific responses to certain of the Union’s arguments, including that the Agreement contemplates that multiple days could be spent away from home, such as for turn service and that the Grievor was not “held away” when put on a reset break at the AFHT. It pointed out that an employee “held” cannot leave the AFHT; while the Grievor could have left, gone home and returned again.

Decision

[48] The resolve of this particular Grievance is straightforward. The Grievor is an employee in the West. Article 8.09 was negotiated for the benefit of LE employees in the West. The question is, did the Company act in breach of its negotiated obligation under Article 8 to make “every effort’ to return this Grievor to his own home terminal “as soon as possible”, in these circumstances?

[49] It must first be emphasized that the Union is not in a position to assess or prove the extent of the Company’s efforts. It is the *Company’s* onus to establish it fulfilled its contractual obligation once the Union raises an issue that it has not met its obligations. That issue has been raised in this case. The Company agreed to the obligation which was negotiated into Article 8.09. The Company’s obligation under Article 8.09 must be given a “plain and ordinary” meaning under the modern principle of interpretation. The principles are not disputed and are summarized in **CROA 4884**.

[50] Under the modern principle, the phrase “*every effort*” must be assumed to have been used intentionally by the parties, and must be given meaning. It is also logical that

to establish that "*every* effort" was taken to return the Grievor "as soon as possible", there must be evidence brought by the party with that obligation of "*what*" efforts were in fact taken by that party. It is at this point that the Company's arguments falter. In its submissions in Chief, the Company did not offer evidence of *any* specifics for its "review and determination" of how it attempted to fulfill its obligation to make "every effort" to return the Grievor back to his Home Terminal "as soon as possible". In Reply, the Company stated that the train the Grievor would have worked had he not been placed on a reset break *did* arrive in Medicine Hat before the Grievor's window closed, but that the Company was not willing to take the risk of there being "less than 10 hour left before arrival" to potentially violate the DRPR.

[51] However, the DRPR includes an extension of time if an individual is being deadheaded to his home terminal. That evidence of the Company in fact favours the Union's position.

[52] Apart from the train's arrival, the Company provided only general arguments regarding its "practice" and the difficulties it "generally" faced and what factors could impact its efforts "generally". It did not offer any specifics. For example, which of the range of factors it mentioned in its submissions as impacting its decisions were actually *acting* in this case, for this Grievor? What steps were taken to address those issues, for *this* Grievor? What possibilities did the Company consider and discard for this Grievor? When all else failed, did the Company even consider the possibility of deadheading the Grievor home for his reset break and if not, why not, given that the DRPR provides for an extension of maximum duty times, to reduce the "risk" of a DRPR violation, if the employee is deadheaded home?

[53] While the Company noted the Grievor was required to take regulatory rest of 10 hours at the AFHT - taking him to 6.1 days since his last reset break after his regulatory rest was complete - that rest and its impact surely could have been anticipated by that earlier review of this Grievor's situation.

[54] As the Company had also stated that its practice was to assess individuals at *day 4* of their window (and now at day 3), it is unclear how the Grievor got to day 6.1 of his window without earlier significant consideration of which there was no evidence.

[55] The Company argued these decisions cannot be looked at with the calm of distance, given they must be made within the “real time” operational workings of the Company and that it was working “on they fly”, after its call with Transport Canada. The Company also relied on the fact the DRPR has only been in effect a short time, and that there is “not always alignment” between the DRPR and the Collective Agreement (at para. 12).

[56] Those arguments are not particularly compelling. First, it is often the case that Arbitrators are asked to review operational decisions that are taken under the demands of the Corporation’s “read time” business, just as employee’s are judged for the mistakes which they may make “in the moment”, which can then lead to discipline.

[57] Second, collective agreements must respond to externally changing realities. That agreement governs a continuing relationship. No party can anticipate every event that might occur during its currency. That is why the Agreement is subject to periodic review through bargaining.

[58] Third, the obligation under Article 8 is independent of – and broader than – any particular external requirement, such as the DRPR, but it impacts what the Company can – or cannot – do when it is *applying* the DRPR to this Grievor. While there may well be situations where the Company cannot comply with both the DRPR and the Collective Agreement, it has not been demonstrated that this is that case. No misalignment between the two was demonstrated.

[59] Finally, should the Company desire to alter its obligation under the Agreement in the face of the DRPR, that result must be achieved at the bargaining table and not through the “pen” of a rights arbitrator.

[60] It is also not an answer to suggest the Grievor could have gotten himself home and then come back to report, since he was not under “detention”, as the Company maintained that others had done. No explanation was offered of why the *Grievor* should expend the time and energy to get home and back for a two-day break – given the time needed to also *experience* that break – and given that it was the Company who agreed to use its “every effort” to return the Grievor to his Home Terminal “as soon as possible” under Article 8.09.

[61] That logic inappropriately shifts the obligation to the Grievor, when according to the Collective Agreement, it falls on the Company. Neither is the Grievor required to "keep an eye" on his own "clock", given that it is the *Company* which designates where that reset break is served. That logic is also an effort to shift the obligation inappropriately to the Grievor. It is also a circular argument to suggest the Company did not make efforts because the Grievor was unavailable at the AFHT, when he was unavailable because the Company did not exercise "every effort" to return him home.

[62] The Company argued its practices for reset breaks have "continued to evolve" over the past year. While that may be true, it is still held to its obligations under the Collective Agreement.

[63] The Company was able to return employees to their Home Terminals between May 2023 and March 2024 to serve reset breaks. An Assessment Committee had been studying the issues resulting from the DRPR for a year before it was implemented. While some learning and adjustment would be expected - and it may well be the case the Company got "better" over time - the implementation of these Rules was well-telegraphed and were not unexpected. Neither was the Company's obligation under Article 8.09 "new" or "unexpected".

[64] It would have aided the Company's position had they asked Transport Canada to reduce its direction to writing, to understand what that direction entailed, and how it interfaced with the requirements of the DRPR and the Agreement.

[65] Given the lack of evidence of efforts that *were* taken by the Company to address this issue, for this Grievor, the Union's argument is persuasive that the Company has not met its burden to establish it met its obligation under Article 8.09 to make "every effort" to return the Grievor to his Home Terminal "as soon as possible".

Remedy

[66] That leaves the question of the appropriate remedy. Both parties argued regarding the nature of the held away payment in Article 8 and whether it applied. It is unnecessary for the purposes of this resolution to determine what the held away payment does nor

does not compensate, or whether it does – or does not – apply. Arbitrators have a broad jurisdiction to craft an appropriate remedy. Given all of the circumstances, an appropriate remedy for the Company's breach is $2,000.

[67] As this is an issue of the application of factual circumstances to the Company's obligation in Article 8, it is not an appropriate situation for a cease and desist order to issue.

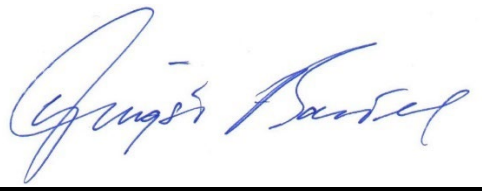
Conclusion

[68] The Grievance is upheld.

[69] A declaration will issue that the Company has breached Article 8.09 for this Grievor.

[70] The remedy for this breach will be payment to the Grievor of $2,000.

I retain jurisdiction for any questions relating to the implementation of this Award and regarding its remedy. I also retain jurisdiction to correct any errors and address any omissions, to give this Award its intended effect.



February 14, 2025

CHERYL YINGST BARTEL
ARBITRATOR