

IN THE MATTER OF AN ARBITRATION

Between:

CANADIAN PACIFIC
(The "Company")

- and –

UNIFOR LOCAL 101-R
(The "Union")

Re: Alyth Waste Water Treatment Plan

For the Company:

Sharney Oliver - Manager Labour Relations

For the Union:

Jim Wiens – President Unifor Local 101-R

Hearing

August 28, 2020

Calgary, Alberta

AWARD

1. As set forth in the Joint Statement of Issue (JSI), the Union alleges that the Company laid off two Diesel Service Attendants (DSA) at the Alyth Waste Water Treatment Plant (WWTP) on August 29, 2016 and replaced them with a contractor. It asks that they (and others) be compensated for work done by “employees outside of the bargaining unit”.
2. The Union asserts that on March 22, 2012, in settlement of a similar grievance, the Company agreed to assign the work at issue here to qualified CAW (now UNIFOR) employees as follows:

*... The Company will ensure that the operation and the work, that is currently performed by the CAW at the Waste Water Treatment Plant will continue to be assigned to the **qualified** CAW employees, with the contractors involved, overseeing, auditing, and completing the required sampling as required. The Contractor will also provide direction on the City of Calgary standards to the Company to ensure optimum operation of the Waste Water Treatment Plant.*

(Company Tab 1C; Emphasis added)

3. The Company does not dispute the nature or contents of the above-noted email. It acknowledges that all the DSA work, encompassed by the 2012 grievance, is now being done by the former contractor, alluded to therein, whom the Company hired as a full time Supervisor in 2016.
4. However, it points out that the commitment contained in Tab 1C, was not limitless; nor was it bargained into the Collective Agreement notwithstanding the Union’s opportunity to do so in the bargaining sessions since 2012. It asserts that even if it were, the agreement applies to “qualified” employees. In its JSI, it maintains that:

... as a result of technology, the core functions of this position (the DSA) no longer warranted a full time position. Furthermore the technological change associated with the Waste Water Treatment position resulted in job functions that were outside of the scope of the Diesel Service Attendant position. Accordingly, it is for these aforementioned reasons that the Company denies this grievance.

5. The Company says that the mandated, technological change, upgrades to the WWTP in 2016 triggered two consequences relative to the duties of the DSA’s: (1) they resulted in job functions that were outside of the scope of the DSA; and, (2) the core functions of the DSA no longer warranted a full time WWTP position.

6. Accordingly, based on the limited DSA work which remained and the fact that the core duties required were beyond that position's scope, the Company restructured the operation of the WWTP and re-assigned the DSA tasks at the WWTP to a Supervisor.
7. The contractor mentioned in the 2012 email, Mr. Kyle, was hired in 2016 as "*Manager of WWTP's in Alberta/Saskatchewan*". His current title is "*Specialist Field Waste Water*". A job description of his duties are found at Company Tab 3.
8. The Grievors were not laid off (as alleged by the Union in the JSI). Rather, Mr. Gagne and Mr. Lewis were re-assigned to duties - within their job description - which no longer included them working at the WWTP.
9. There is no dispute that the duties being performed at the WWTP by the two DSA's were limited. Nor is there a dispute that the Grievors were re-assigned to other duties within their job descriptions without loss of any compensation or hours.
10. As well, the Company asserted (and it was not disputed) that the Grievor's work had, in the past, been performed both by Mr. Kyle in his capacity as a contractor as well as TCRC (MWE) employees.

Decision

11. The duties of the DSA's, at the material time, are set forth in Appendix V of the Collective Agreement; those of the Supervisor are set out in Company Tab 3. A reading of both reveals that, while the duties of the DSA's only refer to water treatment as one of a myriad of other duties which include:

*Wash locomotives, when required. Process fuel cars, and fuel tickets, sand cars, lube oil cars, **water treatment** and toilet fluids.*

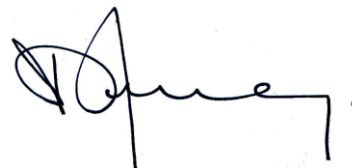
the duties of the Field Waste Water Specialist are entirely focused on:

... Maintaining operational and regulatory compliance associated with storm and industrial waste water.
12. It appears, from Appendix V, that the primary function of the DSA's "*water treatment*" role – when read in context – is related to the treatment of water and toilets located on the locomotives.

13. The Union argues that, irrespective of how much work was done or whether it was a core function of the job, the DSA's essentially "owned" the work at the WWTP and the re-assignment of the same breached *Rule 12.1* of the parties' Collective Agreement.
14. *Rule 12.1* provides:
*Official, managerial or supervisory employees shall not be allowed to perform **the work of bargaining unit members** when the latter are available. This is not intended to restrict the use of working supervisor in accordance with established practice at small points.*
15. I am not convinced, based on the evidence adduced, that the DSA "work" at issue was work which was exclusively "*the work of bargaining unit members...*" as contemplated by *Rule 12.1*. A review of the parties' practice at the WWTP disclosed that the Grievors' work was also done by contractors, working supervisors and members of another union. That "*established practice*", taken with the job descriptions themselves, leads me to conclude that the Union has not proven that the transfer of the DSA work at the WWTP to a working supervisor constituted a breach of *Rule 12.1* of the Collective Agreement.
16. In its argument, the Union also contended that the Company, through its reassignment of duties at the WWTP, breached *Article 8* of the *Job Security Agreement* (Company Tab 5). The relevant portions read as follows:
- 8.1(a)** *The Company will not put into effect any technological, operational or organizational change of a permanent nature which **will have adverse effects on employees holding permanent positions** without giving as much advance notices as possible to the President of Local 101 or such other person as may be named by the Union to receive such notices.*
- [...]
- 8.7** *The Terms operational and organizational change **shall not include normal reassignment of duties arising out of the nature of the work in which the employees are engaged**, nor changes brought about by fluctuation of traffic or normal seasonal staff adjustments.*
 (Emphasis Added)
17. The *Technological Operational Organizational and Other Change* provisions of the *Job Security Agreement* are, in my view, intended to protect permanent positions as opposed to the specific tasks within a particular job description and to allow for the kind of reassignment of duties arising out of the nature of the work.

18. As the language reflects, the Company is only required to provide notice of the technological change should it have adverse effects on the positions of permanent employees. Here, after their re-assignment, the Grievors maintained their jobs without any adverse effects in terms of compensation, benefits or loss of full time employment. Their positions were not abolished - nor were they laid off - as argued by the Union. Rather, as *Article 8.7* permits, they were re-assigned to work within their job descriptions at other jobs within the workplace.
19. Finally, the Union alleged that the re-assignment of the Grievors' DSA work to Supervisor Kyle, was a breach of the *Contracting Out* provisions contained in *Rule 53* of the Collective Agreement. The evidence established that, when the re-assignment of duties took place in 2016, Mr. Kyle was a full time Supervisory employee of the Company. *Ipsa facto*, *Rule 53* does not apply.
20. The burden falls to the Union to establish its case on a balance of probabilities (see: **SHP 733** at *para. 23*). In the circumstances as determined here, the Union has failed to establish that the Company - in assigning the DSA's WWTP work to a working supervisor - breached either *Rule 12* or *Rule 53* of the Collective Agreement or the provisions of *Article 8* of the *Job Security Agreement*.
21. The grievance is dismissed.

Dated at the City of Calgary this 15th day of December 2020.



Richard I. Hornung, Q.C.
Arbitrator