

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

CASE NO. 4714

Heard in Montreal, December 18, 2019

Concerning

CANADIAN PACIFIC RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The Union advanced a grievance on behalf of Locomotive Engineers in Revelstoke with regard to the alleged violation of the Golden Zone Agreement and Article 30.11 of the Collective Agreement.

JOINT STATEMENT OF ISSUE:

On January 22, 2016, the Union advanced a grievance stating that Spareboard Engineers must be used on an adhoc basis to fill all temporary vacancies at Golden of 7 days or greater rather than requiring one Engineer from Revelstoke to work the temporary vacancy 7 days at a time under the auspices of the Weekly Placement Process. The handling of 7 day vacancies in dispute are annual vacation vacancies the Union contends this is a violation of the Golden Zone agreement that stipulates that temporary vacancies must be filled in the following order and more specifically item #3:

Temporary Vacancies:

1. Filled by the senior Locomotive Engineer from Revelstoke or Golden requesting the vacancy.
2. If no LE requests the vacancy, the senior LE at Golden who is not working as such will fill the temporary vacancy.
3. If there is no LE requesting the temporary vacancy and no Golden ESB available, the work will be manned by the Revelstoke Spareboard under spareboard rules.

The Company maintains that rather than filing the temporary vacancy one day at a time the entire 7-day temporary vacancy must be filled under the auspices of the Revelstoke Weekly Placement Process and in line with the language set out in the Collective Agreement.

Union's Position:

The Union contends the language in Article 30.11 is clear and the Company must revert to the language in the Golden Zone Agreement when placing employees on the vacancies created by annual vacation at Golden.

Previously the Company has correctly utilized the Golden Zone Agreement for filling temporary vacancies but has now redefined the definition of temporary vacancy. The Union cannot agree and is seeking an order that makes whole those that have lost wages as a result of the Company's arbitrary change. In addition, the Union also requests an order that the Company cease and desist from forcing Revelstoke Engineers to work temporary vacancies in Golden and any other such relief the Arbitrator deems necessary in order to ensure future compliance with the above provisions in question. The Company has not responded to the Union's request.

Company's Position:

The Company disagrees with the Union's allegation and denies the Union's request.

The Company asserts that Article 30.11 of the Collective Agreement supports the Company's position and differentiates temporary vacancies from vacation vacancies.

Further, the Company maintains that it is obligated to fill vacation vacancies as directed in Article 25.05 – Filling of Vacancies – Weekly Placement Process.

Accordingly, the Company's actions are aligned with the Collective Agreement obligations and no violation has occurred.

FOR THE UNION:

(SGD.) G. Edwards

General Chairperson

FOR THE COMPANY:

(SGD.) D. McGrath

Manager, Labour Relations

There appeared on behalf of the Company:

S. Shaw	– Senior Director, Labour Relations, Calgary
D. Pezzaniti	– Assistant Director, Labour Relations, Calgary

And on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
G. Edwards	– General Chairperson, Calgary
S. Cadder	– Local Chairperson, Revelstoke
D. Fulton	– General Chairperson, Calgary
W. Apsey	– General Chairperson, Smiths Falls

AWARD OF THE ARBITRATOR

1. The central point at issue is the Company's ability to differentiate between "temporary vacancies" and "vacation vacancies" (of 7 days or more) in the application of the *Golden Zone Agreement*.

2. The Union argues that annual vacations of 7 days or more are covered within the meaning of "temporary vacancies" as defined in Article 30.11 of the Collective Bargaining Agreement and applied in the *Golden Zone Agreement* (Union Ex. 2); and the Agreed Practice supplemental to the *Golden Zone Agreement* (Union Ex. 3). And, therefore, vacation vacancies are to be staffed on a daily basis in the same manner as *ad hoc* vacancies.

3. The Company asserts that, based on the same Article of the Collective Agreement (30.11), vacation vacancies and vacancies in excess of 7 days are to be staffed in an alternate manner that takes into consideration the provisions of Article 25.05 (1) – (4).

4. The relevant provisions read as follows:

Article 30.11

(2) A temporary vacancy, except vacation vacancies and vacancies in excess of 7 days created by authorized leave of absence in all other classes of service, will be filled by spare engineers for the first 7 days, after which such temporary vacancy and subsequent vacancies created thereby, will be filled by the senior Engineer desiring the run. In the event there is no applicant for such vacancy it will be filled by the junior spare Engineer. An Engineer electing to fill a temporary vacancy under the provisions of this paragraph, must remain on that vacancy until replaced by the regular Engineer or displaced by a senior Engineer except that they may exercise their seniority to a subsequent occurring vacancy in preference service or

from one pool to another. For the purpose of this rule, the order of preference is yard (night to afternoon to day) -- transfer --freight -- passenger. (emphasis added)

Article 35.01

Rules necessary to meet local conditions and not inconsistent with the provisions of this Agreement may be negotiated and made effective, subject in each case to the approval of the General Manager and General Chairman.

Article 40 – Zone Agreement

40.01 Dividing of Seniority Territory into Zones

(1) When a Zone Plan is contemplated the Local Chairman will divide the Seniority District into Zones, so that employees may be permitted to avail themselves of the privilege of remaining at their homes. The Local Chairman will submit the proposed Zones to their respective locals and if the locals approve, the matter will be submitted to a referendum vote of the members of the locals; and if the vote is carried by a majority of the members of each local entitled to vote, the Local Chairman will have the authority to put the plan into effect, subject to the approval of the Local Officers.

(2) If it is found at any time that the Zone Plan is not satisfactory in any particular seniority territory by either the Company or the Union, a meeting will be held on one month's notice to discuss and revise same in that particular territory.

Golden Zone Agreement

This Golden Zone Agreement will supersede and withdraw the Material Change Notice issued on September 20, 1998 in regards to creating a home terminal at Golden, BC.

2.0 Filling Vacancies at Golden

2.2 Temporary Vacancies at Golden will be filled as per the Local Rules and Local Agreed Practises of the BLE and UTU 501

Agreed Practises

Agreed Practise in effect at Revelstoke, BC, between Division 657, Brotherhood of Locomotive Engineers, and Canadian Pacific Railway Company

This Agreed Practice is supplemental to the Golden Zone Agreement and except as necessary for the implementation of this Local Rule, the Golden Zone Agreement shall apply.

(3) Temporary Vacancies

Temporary Vacancies at Golden will be filled by the Senior Locomotive Engineer from Revelstoke or Golden requesting the vacancy.

*If no Locomotive Engineer requests the vacancy, the Senior Locomotive Engineer at Golden who is not working as such will fill the temporary vacancy. If there is no Locomotive Engineer requesting the temporary vacancy and no cut back Locomotive Engineer available at Golden the work **will be manned by the Revelstoke Spare Board under Spare Board Rules.***

(4) Ad Hoc Vacancies

Ad Hoc vacancies will be manned by the Locomotive Engineers spare board at Golden should one be established.

...

5. According to the Union, the Golden Zone Agreement requires the Company to utilize the workforce in Golden on a daily basis before forcing Revelstoke employees to Golden for 7 days (who would thereby incur the consequent costs personally).

6. There is no dispute that where permanent vacancies occur in Golden - because there are not enough engineers available - the Company can force Engineers to Golden. The same applies where Engineers bid into a position at Golden in order to avoid a lay off.

7. However, the Union asserts that where temporary vacancies occur in Golden - these include annual vacations or *ad hoc* - the Company cannot force and must follow the Golden Zone Agreement.

8. The Company does not argue that it cannot force temporary vacancies. Rather, it argues that Annual Vacations do not constitute a “temporary vacancy” caught within the

parameters of Article 30.11. It points out that the words as emphasized in Article 30.11 are specifically intended to “***except vacation vacancies and vacancies in excess of 7 days created by authorized leave of absence ...***”. It argues, as well, that a reading of the Collective Agreement as a whole - including the provisions of Article 25.05 – make it apparent that the intention of the parties is to fill vacancies on a Weekly Placement Process (WPP).

9. It points out that the Company’s application of the provisions of the Zone Agreement is in keeping with the provisions of Article 25.05 which require that vacancies be filled in a fashion which will “... *eliminate mid-week displacements and consequently provide employees a more stable workplace*”.

10. In 2015, based on its interpretation above, the Company began forcing Engineers to Golden to fill Annual Vacation vacancies (or those which exceeded 7 days) to Golden.

11. Article 35.01 provides that the rules which are necessary to meet local conditions and “*are not inconsistent with the provisions of this agreement*” may be negotiated and made effective. The conditions of the Golden Zone Agreement and the Agreed Practice supplemental thereto, met those requirements when they were established. Both parties agree that they remain in place.

12. There is no dispute that until 2015, the Company interpreted and applied the Golden Zone agreement in a fashion which provided for employees who were forced to Golden to cover vacation leave to do so without incurring personal expense.

13. The Weekly Placement Process (Articles 25.05) was negotiated in 2004; well after the Golden Zone Agreement was completed. That notwithstanding, the Company continued to pay the Engineers forced to Golden in the same fashion that it had since the inception of the Golden Zone Agreement.

14. Given that they are scheduled well in advance, it makes practical and common sense that Annual Vacation vacancies would be staffed for a full week by the same employee so as to reduce the costs and ensure a more stable work place for employees.

15. It is apparent that the language in Article 30.11 – while including annual vacations as part of the definition of “*temporary vacancies*” - intended that the manner in which annual vacations would be staffed was to be “excepted” from the manner described therein.

16. However, the parties did not define (either in Article 30.11 or the Golden Zone Agreement and Practises) how they would be “excepted”.

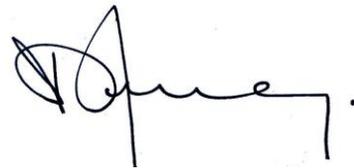
17. Nevertheless, Article 40.01 provides as follows:

(2) If it is found at any time that the Zone Plan is not satisfactory in any particular seniority territory by either the Company or the Union, a

meeting will be held on one month's notice to discuss and revise same in that particular territory.

18. Accordingly, the appropriate resolution of this matter is to direct that:
- a) the parties be given a period of 60 days from the date hereof to negotiate the appropriate changes to the Golden Zone Agreement - pursuant to Article 35 (1) - taking into consideration the WPP; the provisions of Article 25.05 and the parties' past practice.
 - b) failing agreement thereon, the matter is to be returned to me for determination;
19. I will retain jurisdiction with respect to the interpretation, application and implementation of this award.

February 28, 2020



RICHARD I. HORNUNG, Q.C.

ARBITRATOR