

**IN THE MATTER OF AN INTEREST ARBITRATION**

**BETWEEN**

**CANADIAN PACIFIC RAILWAY**

**(the “Company”)**

and

**TEAMSTERS CANADA RAIL CONFERENCE**

**(the “Union”)**

**RE: THE ESTABLISHMENT OF A PROCESS TO FILL ANNUAL VACATION  
VACANCIES**

**SOLE ARBITRATOR: John Stout**

**APPEARANCES:**

**For the Company:**

David E. Guerin – Sr. Director Labour Relations

Chris Clark – Assistant Director Labour Relations

**For the Union:**

Ken Stuebing - Caley Wray

Steven Weisman – Student-at-Law

Wayne Apsey – General Chair, TCRC – CTY East

John Campbell – General Chair, TCRC –LE East

Greg Edwards - General Chair TCRC –LE West

Harvey Makoski - Senior Vice General Chair, TCRC-LE West

Dave Fulton - General Chair, TCRC-CTY West

Doug Edward - Senior Vice General Chair, TCRC-CTY West

Ed Mogus – Senior Vice General Chair, TCRC CTY East

**HEARINGS HELD IN TORONTO, ONTARIO ON SEPTEMBER 20, 2016**

## **INTRODUCTION**

1. This matter concerns an interest dispute between Teamsters Canada Rail Conference (the “Union” also referred to as “TCRC”) and the Canadian Pacific Railway Company (the “Company” also referred to as “CP”) relating to the process to be utilized to fill vacant annual vacation slots.

2. The dispute affects all four of the Union’s General Committees of Adjustment (the “GCAs”). The two western GCAs represent the Union’s running trade members employed by the Company throughout the region known as Western Canada (Thunder Bay west to British Columbia). The two eastern GCAs represent the running trade members employed by the Company throughout the region known as Eastern Canada (Thunder Bay east).

3. The issue arises from the most recent round of collective bargaining that was resolved by an interest arbitration award issued on December 7, 2015 by the Honourable George Adams Q.C. (the “Adams Award”).

4. During the mediation that preceded the Adams Award, the parties agreed to establish a process to fill vacant annual vacation slots. The parties were unable to agree on an acceptable process and as a result they referred the issue to me as an interest arbitrator.

5. The parties agreed to utilize the Canadian Railway Office of Arbitration & Dispute Resolution (CROA) process for hearing and resolving grievances. The CROA process involves the parties filing an extensive brief, which includes a written statement of their position together with evidence and argument. The arbitrator has jurisdiction to make such investigation, as he or she deems proper, including whether or not oral evidence is necessary for resolving the dispute.

6. The nature of the dispute is set out in the Joint Statement of Issue filed by the parties, which provides as follows:

### **JOINT STATEMENT OF ISSUE**

#### **Dispute:**

**The parties were unable to come to a final agreement on the process to fill vacation slots.**

#### **Joint Statement of Issue:**

During the 2014 round of bargaining the parties agreed to establish a process to fill annual vacation slots. The agreed upon article read:

#### **Annual Vacation Vacancies**

Establish a process to fill vacation slots that become vacant through a system of selection on a seniority basis, according to the craft list the employee falls within that particular year.

Note: Should the parties not come to final agreement on the process to fill vacation slots as provided above within 6 months of the issuance of the Adams Award, the parties agree to take the outstanding matter to an agreed upon third party. If the parties cannot agree on a third party, the parties agree to use the services of the Senior CROA Arbitrator on an adhoc basis.

The parties had two conferences calls and exchanged positions however were unable to agree on the terms and conditions of the process to fill annual vacation slots. The parties have agreed to take the matter to Arbitrator Stout.

#### **Union Position:**

It is the Union's position that the annual vacation slots will, in all circumstances, be filled to the established annual vacation flat line number for the respective terminal. Annual vacation slots that become vacant throughout the year will be filled by bids received each month.

The Union proposes the following language be incorporated into the Collective Agreements.

Changes to allotted Annual Vacation periods will be handled as follows:

On the 1st Tuesday of every month from February to November the CMC will issue a bulletin listing all the AV weeks (slots) available that have not been fully allocated to the flat line number. Employees wishing to change their vacation period(s) will have 10 days to fax/email in an Annual Vacation Change Request Form to the AV Admin Clerk. Employees will be notified of the results, by bulletin on the Friday of the following week.

Vacant slots between bulletin postings will be handled on a case by case scenario and must have approval of CMC Management. The Company reserves the right to exceed the flat line number in any given week.

**Company Position:**

The Company proposes the following language:

**CHANGING ANNUAL VACATION PERIODS**

-Employees will only be able to move their vacation period into a week or weeks which are not fully allocated.

On the 1st Tuesday of every month the CMC will issue a bulletin listing all the weeks in the following month that have not been fully allocated and remain available following operational/manpower considerations. Employees wishing to change their vacation periods will have a 10 days to fax/email in an Annual Vacation Change Request Form to the AV Admin Clerk. Employees will be notified of the results, by bulletin on the Friday of the following week.

\*\*\* All Changes must be approved by CMC Management \*\*\*

**BACKGROUND FACTS**

7. The Company is a class 1-railway operating across Canada.
8. The Union represents the Company's running trades employees across Canada. As indicated earlier, this dispute involves all four of the Union's GCA's.
9. The parties have agreed to extensive vacation language in their four Collective Agreements. Relevant to these proceedings is the language found at Article 67 of the CTY Collective Agreements and Article 17 of the LE Collective

Agreements. The relevant language in each Collective Agreement is similar as far as the annual vacation (AV) selection process.

10. Generally, the Collective Agreement language provides for a certain amount of annual vacation slots to be allocated per craft. These vacation slots are referred to by the parties as the “baseline” or “flat line” allotment of vacation slots for each craft for each week of the year, which represents the maximum number of employees from each craft who can be scheduled for vacation during each week.

11. During the AV selection process, a determination is made of the number of actual employee weeks of annual vacation, which is divided over a period of 48 weeks and “rounded up”. This gives the parties the flat line number for a craft. An example referred to by the Union was Locomotive Engineers (LE) in Lethbridge, Alberta have four (4) as the flat line for AV in 2016. Therefore a maximum of four (4) LE employees can be on vacation each week. If in any given week only three (3) LE employees have scheduled vacation, then there would be one (1) vacant slot.

12. There are a number of reasons why annual vacation slots may become vacant. The following examples were referenced:

- Slots are not taken in the initial bulletin
- An employee becomes sick and declines to take their scheduled AV
- An employee retires before their allotted AV;
- An employee is terminated or laid off
- An employee moves their AV to another vacated slot
- An employee exercises their seniority to another terminal.

13. The Company implements the AV selection process, provided under each Collective Agreement, by issuing a Terminal AV Bulletin each year on December 15 (for the following year’s vacation selection), which closes on January 15. A Terminal AV Bulletin has six sections:

- A. VACATION ALLOCATION  
The following is the maximum number of running trades employees who may be on vacation at any one time
- B. APPLICATION INFORMATION AND CLOSING DATES
- C. INFORMATION REGARDING ANNUAL VACATIONS
- D. ANNUAL VACATION WEEK INFORMATION
- E. APPLICATION PROCEDURE
- F. LISTING OF CALENDAR WEEKS/WEEKS NUMBERS

14. Each Terminal AV Bulletin has a note, which provides as follows:

#### CHANGING ANNUAL VACATION PERIODS

- Employees will only be able to move their vacation period into a week or weeks which are not fully allocated.
- Employees who are unsuccessful in changing their vacation period must take vacation as scheduled.

**\*\*\* All Vacation Changes must be approved by CMC Management \*\*\***

15. While the Terminal AV Bulletins provide for the movement of vacation, there has never been an agreed upon process for allocation. Rather, the evidence indicates that various local arrangements were utilized, which were generally based on seniority allocation and at the Company's discretion.

16. The Union provided evidence concerning the Company's cancellation of local rules in the fall of 2012, see *Canadian Pacific Railway Company, 2012 CIRB 669*. The Union also provided evidence of how the current process for filling vacant vacation slots lacks "transparency" and "consistency".

17. In addition to the relevant Collective Agreement language, there are three letters of understanding relating to annual vacation selection that are relevant to this matter.

18. The first letter of understanding was agreed upon during the 1999 round of collective bargaining (the "1999 LOU"), which is included in all four Collective Agreements. The 1999 LOU addressed flat lining of annual vacation and provides as follows:

Dear Sirs:

This pertains to our discussions during the current round of collective bargaining regarding the flat lining of annual vacation.

Upon the receipt of the annual vacation allotment and the list indicating preponderance of service for the Running Trade Employee, per terminal, mutual agreement between the Local Union representatives and the Company will determine the following:

The flat-line number of employees who will be allowed to go at any one time, per terminal.

Further accommodations during the peak annual vacation periods will be provided dependant upon traffic fluctuations.

Article 67, Annual Vacation, section four of the UTU West and Article 17, Annual Vacation With Pay, section four of the BLE West will continue to apply, regarding seniority and preference.

19. The second letter of understanding was agreed upon during the 2004 round of bargaining (the "2004 LOU"), and it provides as follows:

Dear Sir:

This is in regards to our conversations during bargaining pertaining to the process for the flat lining of annual vacation (AV).

For clarification, it was agreed that prior to the awarding of AV, local union and management representatives would meet to:

(i) Establish a base line determined by dividing the number of weeks of AV at the terminal by the distribution period (48 weeks). In all cases, the baseline is to be rounded up to the nearest whole number.

(ii) Review previous local experience and future traffic projections to determine whether or not the base line can be increased and by how much for periods of premium vacation demand.

(iii) Where appropriate, if traffic volumes decline more than anticipated during periods of premium vacation or if employees are laid off, the Company would offer additional AV slots and award according to local practice.

It was also agreed that where authorized by the respective General Chairman, local arrangements may be made to distribute annual vacation amongst employees. Such arrangements, however, will not impact the amount of AV slots provided per week as determined above.

20. The third letter of understanding was agreed upon on December 5, 2007 (the "2007 LOU") and it addresses the peak vacation period. The 2007 LOU provides as follows:

This is in regards to our conversations during bargaining pertaining to your desire to increase opportunities for employees to take annual vacation during summer vacation.

In order to provide more opportunities to a greater number of employees during the summer and recognizing the restriction on employees from taking their full allotment of annual vacation weeks during that time, it was agreed that during the summer prime time vacation period:

- One additional annual vacation slot over the flat line are provided at Wynyard, Wilkie, Minnedosa, Mactier, Sudbury, Windsor, Hamilton and Regina. The twelve weeks will be divided equally between Trainmen and Engineers.
- Two additional annual vacation slots over the flat line are provided at St. Luc, Smith Falls, London, Chapleau, Schrieber, Thunder Bay, Kenora, Brandon, Medicine Hat, Lethbridge, Red Deer, Edmonton, Cranbrook, Revelstoke, Sutherland and Kamloops. One slot will be provided to Trainmen and one slot to Engineers.
- Three additional annual vacation slots over the flat line are provided at Vancouver, Calgary, Winnipeg, Moose Jaw and Toronto. One slot will be provided to each vacation list.

The summer primetime vacation period is defined as a 12 week period which includes the last week of June and the first week of September.

21. In the 2012 round of collective bargaining the parties addressed the issue of scheduling vacations during the week that includes December 31. The parties agreed as follows:



## END OF YEAR ANNUAL VACATION

For the purpose of scheduling annual vacation, the week containing December 31, will be considered as the last full week in which to schedule vacation within that calendar year. Employees who are awarded the last full week of the year are obligated to take any General Holidays at the conclusion of the AV period. This week is exempt from the flatlining of AV. The number of available AV slots will be no less than half of the slots available during non-peak week, with a minimum of one slot per craft list.

22. During the most recent round (2014-2015) of collective bargaining, the Union proposed a number of changes to the annual vacation provisions, including a request to define the process for employees to bid on open annual vacation slots. The Company also made proposals to alter the annual vacation language to recognize “true flat lining of annual vacation” by scheduling over a 52-week period.

23. The 2014-2015 round of bargaining did not result in a negotiated agreement between the parties. Rather a legal strike commenced on February 15, 2015. The strike ended when the parties agreed to have their dispute resolved by interest arbitration. The Federal Minister of Labour appointed the Honourable George Adams Q.C. as interest arbitrator.

24. The parties engaged in mediation/arbitration before Arbitrator Adams. Through mediation, the parties reached the following agreement:

Annual Vacation

Annual Vacation Vacancies

Establish a process to fill vacation slots that become vacant through a system of selection on a seniority basis, according to the craft list the employee falls within that particular year.

Note: Should the parties not come to final agreement on the process to fill vacation slots as provided above within 6 months of the issuance of the Adams Award, the parties agree to take the outstanding matter to an agreed upon third party. If the parties cannot agree on a third party, the

parties agree to use the services of the Senior CROA Arbitrator on an *ad hoc* basis.

25. The Adams Award was issued on December 7, 2015. It is worth noting that the Adams Award included a Union leave proposal that is relevant to this matter, the relevant provision provides as follows:

All Local Chairmen can elect to schedule their annual vacation by way of separate list and allotment over the flat line number. The maximum number on Vacation within this separate list is two for any one week. All officers utilizing this separate list will schedule their annual vacation onto the list; with the understanding they may change their scheduled vacation upon notice prior to the deadline for the relevant weekly crew change protocol.

26. Subsequent to the issuance of the Adams Award, the parties held two conference calls and exchanged positions on the process to fill vacant vacation slots. The parties were unable to agree on the process and the matter was referred to me for resolution.

## **DISCUSSION/ANALYSIS**

27. This matter is an interest arbitration and in that regard the principles are well accepted. The goal is to replicate what the parties would have agreed upon had they freely negotiated the Collective Agreements.

28. In the normal course, the parties would provide “comparators”, which would include comparable negotiated or awarded collective agreements. In this case, I was not provided with any relevant comparators. Rather the parties made their submissions based on their own needs and interests.

29. The Company is, not surprisingly, concerned about their manpower requirements and the ability to service their customers. The Company also addressed the issue of employee availability, which they called the “ultimate key factor that drives the dispute”.

30. The Company is open to sharing information with the Union and they are prepared to issue regular bulletins affording employees the opportunity to bid on vacant vacation slots, so long as any given terminal has been experiencing a regular availability rate of 72% or higher over the previous four week rolling average.

31. The Union directed my attention to their material, which they advised documented the problems that were being experienced by Union members under the current process.

32. The Union submits that their proposed language is the most equitable and consistent approach that complies with the established practice of respecting seniority and affording employees the opportunity to take their vacation during available slots.

33. The current process for filling vacant annual vacation slots appears to have been left to the Company's discretion. However, the evidence is clear that the current process lacks transparency and consistency, resulting in disputes between the parties. The parties have agreed that the *status quo* is unacceptable and there needs to be a process to fill vacant vacation slots through a system of selection on a seniority basis, according to the craft list an employee falls within.

34. I appreciate the concerns raised by the Company with respect to manpower and customer service requirements. I note that the current Collective Agreement language (and letters of agreement) already contemplates these issues by providing a very detailed and specific process for determining the availability of vacation slots, including additional slots during peak vacation periods. I am of the opinion that the Company's proposal will unreasonably limit the vacation slots already agreed upon.

35. I also appreciate the Union's concerns about the problems they have encountered in the current process. However, I am not convinced that accepting

the Union's proposal without amendment is justified as a demonstrated need. I have a particular concern about tying the hands of management.

36. In my view, the best resolution is always one that is agreed upon by the parties during free collective bargaining. An imposed resolution rarely satisfies either party and may occasionally lead to future disputes, which is not conducive to good labour relations. Unfortunately the parties were unable to reach a negotiated settlement in this case.

37. I am not bound by the specific proposals submitted by either party as this is not a situation where the parties agreed to final offer selection. In my view, unless final offer selection is agreed upon by the parties, it should not be imposed without prior notice.

38. Generally, collective bargaining is all about the give and take that is required for parties to reach a mutually acceptable resolution. It is rare for one party to be completely successful on a major issue. More often the negotiations end in a compromise, where the parties agree to language that meets both their needs.

39. In my opinion, the resolution of this matter should be one that balances the interests of both parties and will foster further discussion and hopefully an agreed upon outcome through free collective bargaining.

40. I am awarding a letter of agreement to be included in the collective agreement. The letter is based on the Union's language, but provides for the exchange of manpower information so the parties may have an informed discussion about any operational/manpower issues that may arise in the process. The letter also provides for management to raise operational/manpower issues and hopefully resolve these issues with the Union through discussion. If the parties cannot resolve the issues then a third-party neutral will resolve the issues in an expedited manner. The letter shall expire at the end of the collective

agreement, unless the parties agree to extend. This way the parties are free to continue with the process, if it suits their needs, or agree upon a different process during collective bargaining.

## **AWARD**

41. After carefully considering the parties submissions, I direct the parties to include in their Collective Agreements a letter of understanding providing as follows:

### **CHANGES TO THE ANNUAL VACATION ALLOTMENT**

On December 15 of each year, the Company will provide the Union with the previous twelve (12) months of manpower off duty reports for each terminal.

Employees shall be permitted to change their vacation period into a week or weeks, which are not fully allocated. Such changes shall be made on a seniority basis, according to the craft list the employee falls within that particular year. The process for changing annual vacation slots shall be as follows:

On the first Tuesday of every month from February to November the CMC will issue a bulletin listing all the AV weeks (slots) available that have not been fully allocated to the flat line number. The Company shall also provide the previous four week rolling average availability for the applicable terminal.

Employees wishing to change their annual vacation periods shall have ten (10) days to fax/email in an Annual Vacation Change Request Form to the AV Admin Clerk. Employees will be notified of the results, by bulletin on the Friday of the following week and the Union will be given a copy of the bulletin.

CMC Management shall act reasonably in approving any given annual vacation change request.

If CMC Management has any operational/manpower concerns, then they shall raise such concerns with the Union for discussion and resolution. The parties will meet to discuss and address any operational/manpower concerns with a view to reaching a reasonable resolution. During the discussion, CMC Management shall provide the Union with information supporting their concerns. If the parties can't reasonably resolve the issue then the matter shall be resolved on an expedited basis by a CROA arbitrator.

Any vacant slots arising between bulletin postings will be handled on a case by case basis and must have the approval of CMC Management.

This letter shall expire at the end of the current collective agreement and shall not be renewed unless extended by agreement in writing.

42. I remain seized to address any issues arising from my award.

Dated at Toronto, Ontario this 17<sup>th</sup> day of October 2016.

A handwritten signature in dark ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

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John Stout - Arbitrator