IN THE MATTER OF AN ARBITRATION

BETWEEN:

CPKC

and

TCRC

(Supplemental Dispute Regarding the Application and Implementation

of the October and November 2020 Awards)

Before: William Kaplan

Sole Arbitrator

Appearances:

For CPKC: Jackie Laviolette

Mathews, Dinsdale & Clark LLP

Barristers & Solicitors

Dave Guerin

Managing Director, Labour Relations

Francine Billings

Director, Labour Relations

For TCRC: Ken Stuebing

Caley Wray

Barristers & Solicitors

Jason Hnatiuk

Vice General Chair – CTY West

Doug Edward

Sr. Vice General Chair – CTY West

Brandon Myre

Vice General Chair – LE West

Greg Lawrenson

General Chair – LE West

Dave Fulton

General Chair – CTY West

Joe Bishop

General Chair – LE East

Dennis Psichogios

General Chair – CTY East

Brent Baxter

Vice General Chair – CTY East

The matters in dispute proceeded to a hearing held in Toronto on March 16 & 17, 2026.

Background

In September 2017, the parties agreed to remove certain matters from collective bargaining and refer them to ad hoc arbitration including grievances related to Conductor Only crews at the initial and final terminals. After a dispute followed by an order confirming jurisdiction, those cases proceeded to a hearing in October and November 2020. Six consent awards were issued (consent awards), 1A, 1B, 1C, 2A, 2B and 2C (with a further supplemental award relating to 1B issued on November 26, 2020). All six consent awards stated, reflecting what was requested by parties, and as set out in their pre-hearing written submissions, that "this award is intended to provide guidance for both past disputes, including those in abeyance, and future disputes." It is worthwhile, even if unnecessary, to observe that consent awards are awards that both parties have agreed to. Put another way, their terms and conditions – every aspect of them – have been negotiated by both parties and agreed to by both parties. As is customary, and at the request of the parties – and accordingly reflected in the various consent awards – I remained seized, as I do with respect to the awards issued in this case, both consent and otherwise.

Employer Submissions About Jurisdiction

After the six consent awards were issued, the parties engaged in a review process and were able to resolve some outstanding grievances (approximately 1800 cases were resolved/withdrawn, of which 548 were paid). Many cases could not be resolved, however, leading to a case management meeting on June 2, 2022, at which time the union was directed to batch its cases, leaving the employer free, of course, to object to that batching, and for other reasons. The purpose of the batching exercise was to come up with additional cases to provide further

guidance to the parties as they went about resolving a very large backlog of Conductor Only grievances. However, a dispute about scope/jurisdiction arose, and it proceeded to a hearing by written submissions with an award following on February 21, 2023. While lengthy, it is useful to refer to that award setting out some of the history and the reasons leading to the result which has led to the current case:

The union filed its submissions on August 17, 2022, raising lead and batch grievances (revised later in the fall), and the Company objected, taking the position that the union was attempting to massively expand the matters in dispute by raising grievances that were distinct and not supplemental to the specific matters that were addressed in the 2020 awards. In brief, there was, in the Company's submission, no jurisdiction to address the union's new, myriad and unrelated claims. The matter of jurisdiction, and the Company's positions about it, is addressed more fulsomely below.

The union saw matters differently, taking the position that its grievances – eventually winnowed to 17 lead cases – were related to the initial awards and properly batched; in every case, the grievances that were being raised were anchored specifically to one of the particular disputes that was resolved in 2020 and needed to be determined in accordance with the 2020 awards. Furthermore, in the union's submission, given the more than one thousand outstanding disputes, proceeding individually, as now being proposed by the Company, made the exact opposite of good labour relations sense and was, indeed, contrary to the agreed-upon dispute resolution process. Under the *Canada Labour Code* an arbitrator had, in any event, jurisdiction to determine process, and this was one case – based on authorities provided by the union – where it was not only appropriate to proceed as the union requested, given the process earlier agreed to by the parties, but imperative to do so to ensure the orderly disposition of the outstanding disputes in accordance with the results awarded in 2020.

The unresolved status of this matter was again raised during a hearing about something else on December 1, 2022, at which time the Company again raised concerns including, for the first time, whether there was any jurisdiction whatsoever for any matter to proceed to a hearing. Further written submissions ensued with the Company insisting that there was no further jurisdiction to hear these matters: they had to be individually referred in the usual way before another arbitrator agreed to by the parties. (The Company offered to mediate lead grievances subject to certain conditions it outlined; the union rejected that offer, proposing instead a mediation/arbitration process which was likewise declined.)

For its part, the union categorically rejected the Company's assertion that I was without jurisdiction. The 2020 awards, it emphasized, were consent awards and specifically set out the parties' agreement that they were to provide guidance for both past and future disputes. In the aftermath of those consent awards, a review process took place of outstanding claims. While some claims were granted, others were not, in the union's view, for arbitrary and unjustifiable reasons given the guidance that had been provided. While the Company had attempted at every turn to deny jurisdiction to proceed, the record was, the union insisted, clearly to the contrary: jurisdiction was retained to resolve past disputes, including those held in abeyance, and future disputes. It was also incorrect to assert, as had the Company, that the union had not particularized the claims it wished to bring forward. It had done so in a lengthy written submission. In the union's view, claims need not be identical, merely factually similar and related to the 2020 cases. The grievances the union was proposing to be resolved met this test. The onus was on the Company to establish these claims were not factually similar and, therefore, should not be resolved on the basis of the 2020 consent awards.

Award

The fact of the matter is that jurisdiction has been repeatedly contested by the Company but clearly established and maintained since well before the consent awards were released some years ago. The record of this is manifest. There has been no denial of natural justice. Parts of the Company's narrative as set out in its letter of January 6, 2023, are

not accurate. There was, for example, no rectification of procedural flaws; instead, there was an open and transparent process at every step of the proceeding and one consistent with the agreement of the parties as reflected by earlier correspondence from the Company reviewed below. In another example, jurisdiction was never "taken"; it was conferred and confirmed. Likewise, no "position on jurisdiction" was "asserted." Every time the Company raised an objection it was considered and a ruling issued. The evidentiary background makes it perfectly clear that the Company, by its words and actions, attorned to the proceedings and may not, therefore, now claim that there is no jurisdiction for it to continue.

As the Company's September 7, 2022 letter states (in response to the union's August 17, 2022 letter identifying the matters it wished to have determined), its initial objection was not, using the Company's words, to "the established process" set out in the Direction, but with whether the union was in compliance with it. The Company letter continues: "On this basis the Company insists that the union revisit their latest submissions and identify a specific supplemental dispute(s) emanating from one or more of Arbitrator Kaplan's 8 Conductor only Initial & Final award from the Fall of 2020 and attaching a single representative grievances to it/them. Unless and until the Union does this, the process cannot continue." The Company's "Preliminary Objection" was "to any lead grievance by the Union which does not conform to the same set of operational facts as the scenario that Arbitrator Kaplan ruled on in the Fall of 2020. If the facts are different, the dispute is a new and distinct one and it cannot be said to be supplemental to any of the 2020 Conductor Only awards. In those cases, the arbitrator cannot be seized with rendering a decision on it." There is no reading of that Company letter that could lead anyone to conclude that it was asserting that I was *functus*, there being an absolute lack of jurisdiction as the Company later claimed.

Some further discussion of the context is in order going back to the beginning of this matter. The Company contested jurisdiction at the outset. Following submissions, I found for detailed reasons set out in a written decision that I had jurisdiction and the cases proceeded to hearings, at which time consent awards were issued. I have subsequently found continued jurisdiction, which has been communicated to the parties, and the parties filed submissions that made it clear that they were adhering, again using the Company's words, to "the established process." Nevertheless, I agree with the Company as it initially stated: I have jurisdiction only over lead grievances that conform to the same set of operational facts ruled on in 2020.

From inception forward, the entire process reflects the following: by mutual agreement and design it was intended to provide for the orderly determination of a large number of outstanding comparable cases. Lead awards were to be issued and outstanding grievances, past, in abeyance and in the future, were to be determined in accordance with the principles set out in the consent awards.

Consent awards are awards where the parties agree to their specific wording before they are issued. Indeed, as the Company observed in its submissions in this matter, the 2020 awards answered specific questions: "Those specific questions were fashioned collaboratively by the parties well in advance of the 2020 hearings…." In this case, each of the 2020 awards provide: "This award is intended to provide guidance for both past disputes, including those in abeyance, and future disputes." The Company did not have to agree to the consent awards, but it did, and its decision to do so is legally and factually material. To suggest now – notwithstanding initial positions to the contrary in this "established process" – that I am without jurisdiction is without any legal or factual foundation whatsoever. To suggest that the only available remedies are ordering mediation on the Company's terms or recusing myself from the process is not appropriate. The time is overdue to resolve these matters.

The union has, as requested by the Company in September 2022, provided particulars of the 17 lead cases it wishes to have heard: disputes it claims are directly and materially analogous to the 2020 cases. The Company objects to an unwarranted expansion with new, myriad, and unrelated claims. These are matters that can and should be determined, one after the other, at a hearing for which, as noted above, jurisdiction was conferred by the parties.

The Company is fully entitled to take issue with the union's groupings – the batches – and the specific grievances it claims are representative. If the Company establishes that any of these claims are offside they will fail. The 17 lead grievances must be substantially similar – not identical – to one of the cases decided in 2020.

Obviously, facts matter, and these kinds of disputes are often very fact-specific making it challenging to determine whether one scenario is factually similar to another. Cases that appear similar on first instance, may end up being materially distinguishable. But these are disputes that can be considered and resolved. The Company is fully

entitled, as it stated in its October 14, 2022 submissions, to establish that the "facts of the lead grievances are materially distinguishable from the cases…heard in 2020…and therefore not properly before you in this supplemental hearing."

The Company may also raise objection to the union's lead cases on the basis that they are not arbitrable, for example, because, to give one of their examples, they were previously resolved. If the Company establishes that the union in its referral is seeking to expand the scope of the matters in dispute by, for example, advancing entirely new, unrelated or tangential claims, those claims will also fail. Needless to say, the fact that the union attached to its submissions "thousands of pages of other grievances" that it asserted were analogous and should be paid out is a non-starter. The 17 lead grievances, assuming they all proceed, will provide further direction, but nothing in this process could lead to the result in all or some of those 17 lead cases automatically governing the outcomes in countless other disputes.

What can and should happen given the process that the parties agreed on is another review in light of any further awards, a review that will occur at the conclusion of this process, just like what happened last time. However, the Company must, in accordance with the Direction, file its submissions responding to the union's 17 lead cases and in doing so it may take appropriate issue with those grievances and the matters can then be scheduled for a hearing. Put another way, the Company must now respond to the union's 17 lead grievances and groupings and do so within the initially agreed-upon timelines, or as counsel agrees. The matters can then be scheduled in some orderly sensible manner for a hearing. (https://www.canlii.org/en/ca/cala/doc/2023/2023canlii12180/2023canlii12180.html)

The employer sought judicial review. On January 15, 2024, the employer's application for judicial review was dismissed by the Ontario Superior Court of Justice (*CPR & TCRC*, Superior Court of Justice, January 15, 2024). The court recognized, as set out above, that "I have jurisdiction only over lead grievances that conform to the same set of operational facts ruled on in 2020" (para. 34). The court went on to state: "The Arbitrator will have to decide whether the lead grievances submitted by the Union fall within or outside the scope of the parties' agreement" (para. 34). The court noted, as earlier stated and set out above, as I found, that the 17 cases "must be substantially similar" to the consent awards (para. 14). There was no finding that the 17 cases must be identical (which would, in any event, defeat the entire purpose of the proceeding, which is to advance lead cases, not previously resolved identical cases, to assist in the resolution of substantially similar disputes).

Employer Submissions on Jurisdiction and Scope Applicable to this Proceeding

In the employer's submission, jurisdiction was clearly limited to the same set of operational facts. Indeed, the employer referred, in support of its submissions, to an analogous case between these parties – one involving disputes about vacation cancellation – where similar arguments were made about what was similar and what was not in a context where a lead case was advanced to provide guidance for outstanding held-in-abeyance claims. The decision in that matter stated that "resolving these virtually identical matters on identical terms is a completely appropriate use of time and resources." (July 23, 2021 https://www.canlii.org/en/ca/cala/doc/2021/2021canlii64682/2021canlii64682.html)

In this current case, the employer took the position that none of the grievances the union advanced met this litmus test (although, as set out below, several of the grievances were resolved at the hearing and new consent awards issued providing for the 2020 consent award outcomes). In some cases, the employer insisted that the union had not proven its case, and/or in others, the employer called evidence about some, but not all, of the grievances that the union advanced to hearing explaining why they were not substantially similar. Either because the union had not discharged its evidentiary burden, and/or because the employer could demonstrate that the cases were not substantially similar based on the same set of operational facts, the employer argued that all of these new cases – except for the newly agreed-upon consent awards – should be removed from this process and reverted to the general grievance pool (discussed further below).

Union Submissions on Jurisdiction and Scope

The union completely disagreed with the employer's assertion that the new grievances it advanced to hearing were in any material way legally or factually distinguishable from the consent awards. Put another way, in the union's submission, they were all substantially similar based on the same set of operational facts. The union also disagreed with the employer's submission that it had advanced grievances already resolved or that it was attempting to broaden scope by seeking new remedies and otherwise. Yes, the union agreed, the facts were not identical, but that was not the test: the core issues raised were the same or, as how the union put, the nub of the issue in dispute was the same. The union also relied on that analogous case between these parties – the one involving disputes about vacation cancellation referred to by the employer where the same kind of arguments were made – about what was similar and what was not in a context where a lead case – just like in these proceedings – was advanced to provide guidance for outstanding held-in-abeyance claims. The decision stated, as above, that "resolving these virtually identical matters on identical terms is a completely appropriate use of time and resources" (July 23, 2021, https://www.canlii.org/en/ca/cala/doc/2021/2021canlii64682/2021canlii64682.html).

The union, however, went on to observe that this vacation award made it clear that the matter to be determined was not individual circumstances but rather the overriding issue of the cancellation of vacation on short notice in prime time. That main issue was common to every case; the facts of the individual grievances, however, varied widely. As the award noted:

> Having carefully considered the submissions of the parties, the Company's argument that the extent of my jurisdiction is confined to the 2017-18 holiday season is rejected … Obviously, I am not seized in perpetuity with every grievance relating to annual vacation or general holidays. I am, however, seized with respect to the disputes that were held in abeyance pending the determination of the lead case. As has already been observed, the purpose of the protocol was to forward one lead case and then remit that decision to the parties so that other like and outstanding cases that were held in abeyance could be resolved according to its terms. Resolving these virtually identical matters on identical terms is a completely appropriate use of time and resources; and the good labour

relations sense of doing so is manifest. Why have multiple cases proceed that raise similar facts? This is obviously why the parties entered into the protocol reproduced above.

By all appearances, the grievances enumerated in the union brief (paras. 12, 13 & 37) raise the identical issue: cancellation of scheduled vacation on short notice in prime time. The only thing that appears to distinguish these grievances from the one that went to hearing is the name and geographic location of the various terminals, the specific employees, the amount of notice, the number of cancelled vacation dates and the filing dates: accordingly, nothing of either factual or legal significance. The earlier awarded result in the lead case, and as agreed by the parties, should follow with respect to these cases; cases the parties deliberately held in abeyance pending the determination of the lead award. Other than some generalized comments about the lead case being limited to a specific time and place, together with some inapplicable legal submissions, nothing in the Company's brief actually establishes that these outstanding cases are distinguishable.

Very simply, the cases listed in the union's brief relate to facts and circumstances that are on all fours with the lead case and so should be decided like the lead case. The Company is, accordingly, directed, in these like and/or similar cases, to pay the amounts owing forthwith. (July 23, 2021, https://www.canlii.org/en/ca/cala/doc/2021/2021canlii64682/2021canlii64682.html)

This vacation case, the union submitted, segregated the main issue to be decided – the cancellation of scheduled vacation on short notice in prime time – from underlying and irrelevant issues such as who, what, where and when. When applying the principles of that case to the present ones, the union observed that the core issue was identical in each case: whether there had been a violation of the collective agreement as captured and described in one of the consent awards, although there were obviously differences in the nature of the violation, different crews, different tasks, different yards, different times, etc. What mattered, the union again submitted, was the nub of the dispute. To conclude that the cases had to be factually identical, in the union's submission, was not the test, nor could it be given the inevitable array of varying factual circumstances and the overriding purpose of the proceeding. The union asked that the employer's jurisdiction/scope objections be dismissed.

Decision on Jurisdiction

As the court noted in *CPR & TCRC,* "the arbitrator will have to decide whether the lead grievances submitted by the Union fall within or outside the scope of the parties' agreement" (para. 34). For the reasons which follow in the individual cases, I conclude that they fall within

scope. The employer, as it was fully entitled, called viva voce evidence with respect to some of them (discussed further below). But that evidence was not persuasive given that it consisted largely of the employer's witness reading from grievance responses (when available) and also stating his opinion, but it was not one grounded in anything other than, as employer counsel argued, the fact that he was Vice-President Operations, Western Region with a long history with CPKC. In several instances, this witness testified that he made no independent inquiry into some of the matters currently in dispute; in others, even though the grievances were directed to him, he could not recall the circumstances. In several cases, there were employer business records advanced to support the union claims. Moreover, in many cases, the employer did not dispute the union's factual narratives but took the position that they were not sufficiently similar to bring these new lead cases within scope.

To be sure, there were documents missing, such as, for example, some employer grievance responses, but these were documents in the employer's possession and control (assuming they existed, which was debated). The employer cannot dispute other business records relied on by the union by pointing to missing employer grievance responses in the Union Book of Documents (UBD), taking the position that their absence illustrated the union's overall failure to prove its case(s). The employer has known for years about the detailed allegations – and the grievances are without exception lengthy and highly particularized – setting out granular details of the cases that the union would be proceeding with. The employer, therefore, has had ample opportunity to produce its own records, such as its grievance responses (and where the union had not provided them it was because, the union asserted, there were none to provide).

To elaborate: the union had the evidentiary onus, but the employer had more than sufficient opportunity to respond before or at the hearing with its own documents or viva voce evidence to rebut the union's case(s) which, in every instance, were fully particularized. Instead, the employer largely confined its submissions to its witness's assertion that he did not know whether the union's narrative was accurate, and/or recharacterizing the union's narrative, and/or stating that if the union could not prove its case(s), they must fail, along with a blanket assertion that the cases were not sufficiently similar. In six cases, the employer called no evidence at all. In a seventh, it was extremely scant. The employer's principal and overriding position was that the union had not proven its case.

However, the union did prove its case(s) as these things go by advancing business records and other records such as (some) employer grievance responses, not to mention its own grievance documents in the UBD which contained hundreds of pages of documents relating to the grievances in dispute (including pages of ordinary business records documenting activities). Obviously, neither union grievances nor employer responses are proof positive of anything, but the purpose of both it to set out the positions of the parties with with varying levels of detail. The parties rely on materials like these, outlining the particulars of grievances and employer responses, to crystalize the facts and issues in dispute. Grievance arbitration relies on testimony, emails, grievances and responses etc., and some flexibility is employed so that arbitrator can hear the whole story. The grievance process itself requires some reciprocity in approach: the union brings forward a grievance and the employer disputes it with its own account of events. Arbitrators rarely outright reject contested evidence; they assess its reliability and importance. This does not mean anything goes, far from it.

It is normal for both parties to exchange relevant documents. It is normal for an employer to investigate a grievance and provide a response. It is normal for an employer to request further particulars where there is doubt about what is being alleged. The ultimate legal burden does not change, but this is how labour relations work. Evidentiary rules apply seen through a labour relations lens where attention is paid to resolving workplace dispute not focusing on impossible to meet evidentiary standards that are completely foreign to the expeditious resolution of grievances and productive labour relations more generally. One of the main purposes of this proceeding was to provide – in a streamlined manner – more lead grievances to assist the parties in deciding past, current and future disputes. The evidentiary burden must be assessed and applied in this context. And when it is, for the reasons set out below in each case, I find that the union has provided sufficient evidence to prove each of its cases.

The totality of the evidence establishes that the disputes advanced to hearing are substantially similar pertaining to the same set of operational facts as they involve, as set out below, the heart of the issue addressed in each of the consent awards. It is worth mentioning that at the hearing, the parties agreed to several new consent awards reflecting the fact, at the very least, that these new lead cases did raise substantially similar factual issues to be properly resolved in accordance with the earlier consent awards, including the remedies awarded. The underlying facts are different; that is the whole point, to come up with some more lead cases to provide further guidance on the application of the core principles of the consent awards and reduce the backlog and inform settlements going forward. There is no expansion in scope.

A final point, the various lead cases seek a variety of different remedies for various named individuals. The actual application and implementation of the remedies is remitted to the parties as the focus in this award is providing guidance to assist in resolving like cases not dealing with individual remedial claims which the parties can readily work out on their own. In three cases, where no remedy was provided in the applicable consent award, that matter has likewise been remitted to the parties.

The Collective Agreement

Before turning to the grievances, it is useful to set out some of the relevant provisions of the collective agreement:

Article 67.02 PARAMETERS FOR CONDUCTOR-ONLY OPERATIONS

…

(2) INITIAL TERMNAL

Where yard crews are employed a Conductor-Only crew is restricted to performing switching on their own train at the initial terminal.

…

(4) FINAL TERMINAL

A Conductor-Only crew is limited to doubling their train at the destination yard to the extent necessary to yard the train upon arrival because a yard track(s) is of insufficient length to hold the entire train.

A Conductor-Only crew may be required to set-off a car or block of cars at the destination yard at the final terminal or at another yard within the final terminal enroute to the destination yard. This will not be considered as a stop enroute.

(5) Notwithstanding the provisions of (4) above, a Conductor-Only crew is restricted to performing switching on its own train at the final terminal. However, this would not be a common occurrence, it will be the exception rather than the rule.

(6) The Conductor-Only crew will be required to marshall the train to conform with the requirement of the rules and special instructions governing the marshalling of trains, as consequence of the set-off of a bad order car, the pick-up or set-off of cars as contemplated in this Clause 67.02 or the discovery of a marshalling violation.

(7) In respect of their own train;

- the set-off of a bar order car(s) enroute or in the terminal;

- the lift of a bad order car(s) after being repaired in the terminal;

- the handling of diesel units, including robotizing and conventionalizing

- doubling at the initial terminal to the extent necessary to assemble the train for departure because the yard track(s) is of insufficient length to hold the fully assembled train; or

- the handling of an SBU; shall not be considered as a set-off, pick-up or switching pursuant to Clause 67.02, sub Clauses 2), 3), 4), 5) and will not result in a Conductor-Only premium payment.

Article 47.15(3) was referred to in 2B.

Preliminary Union and Employer Submissions on the Merits

In the union's submission, context was important: there was a collective bargaining agreement with restrictive Conductor Only provisions agreed to in consideration for the reduction of the Brakeman position giving the employer the right to operate with two person crews (the union referred to CROA Case No. 3285, Picher, September 13, 2022). In recognition of the latter, the parties agreed to strict limits on what work can be assigned to Conductor Only crews at both the initial and final terminals. In all these cases, the work assigned exceeded those limitations: that was the nub of each dispute, not the who, what, when and where, but whether the governing provision of the collective agreement was breached on facts substantially similar but not identical to the consent awards. No case, the union further observed, could be identical to the consent awards. For instance, the personnel would invariably be different. The number of cars would be different. The yard would be different. The employer-directed activity that breached the collective agreement would be different; all that was required was that these further representative cases be substantially similar to the consent awards and, therefore, useful in providing further guidance in resolving outstanding disputes. That was the purpose of the entire exercise.

For its part, at the hearing, the employer registered its continuing objection to this process. Having said that, the employer further noted that CROA rules do not apply to ad hoc proceedings, and that meant the union had the burden of proof in each case. Stated somewhat differently, in the employer's submission, the union had to prove that the cases were substantially similar based on the same set of operational facts, and if they failed to discharge this burden, the grievance(s) must be removed from this process and returned to the grievance pool. (As noted above, and for the reasons set out above and below, I conclude that the union has in every case met its evidentiary burden of establishing that the cases it advanced were substantially similar based on the same set of operational facts. The conclusion is axiomatic that the employer has agreed with this in the case of the new consent awards.)

It must be noted that the parties continued to disagree about the remedial consequences should some or all the grievances be allowed. The union took the position that the outcomes should apply to all those held in abeyance; the employer disagreed. As was made clear at the hearing, the purpose of these new lead cases is to provide the parties with further guidance, not to prescribe and then impose blanket outcomes. This exact point was earlier made in the February 21, 2023 award: "The 17 lead grievances, assuming they all proceed, will provide further direction, but nothing in this process could lead to the result in all or some of those 17 lead cases automatically governing the outcomes in countless other disputes." While there were suggestions to the contrary, each of the consent awards, without exception, provides that they were intended to provide guidance for both past disputes, including those held in abeyance, and future disputes. Accordingly, whether one of the lead cases was filed before or after the consent grievances is immaterial.

The Grievances

As noted above, 17 grievances were referred to the hearing (reduced from 33 as first proposed by the union). As noted above and below, several were resolved with consent awards at the hearing. Remedies, remitted to the parties, are to be in accordance with the consent award tailored to the individual claims in each of the following cases. Again, as noted above, where the consent award does not provide a specific remedy, that matter is likewise remitted to the parties.

1A Grievances

Consent award

The October 19, 2020 1A consent award stated the following: "At issue in this case is whether the company can require a Conductor Only freight crew to Yard another train prior to departing the initial terminal with their own train." The answer to that question was no as doing so was precluded by Article 67.02.

Grievance 8461

Union Submissions

Simply stated, in the union's submission, in this instance the crew was instructed to handle traffic other than what was pertaining to their own train. They were required to perform, over many hours, multiple moves on other trains (including build, block lift, excessive flat switching, and brake testing) in a terminal with yard crews employed. This activity was documented in CPKC records (CTT claim p. 186 UBD). This activity was also detailed in the union's February 23,

2015 grievance, in its June 1, 2015 Ex Parte Statement of Issue and in its June 17, 2015 correspondence. This was all work, the union argued, that was substantially similar to the activity leading to the 1A consent award. Indeed, in the union's view, 1A and 8461 were more than substantially similar as in each instance the crews were directed to perform duties at the initial terminal contrary to collective agreement restrictions as the duties were not in connection with "their own train" thus falling directly within the ambit of 1A. In both cases, the terminals had yard crews, and where yard crews are employed, a Conductor Only crew is restricted to performing switching on their own train at the initial terminals (and the yard crews need not be on duty for the prohibition to apply). Yarding another crew's train was not permitted, and building another train was not permitted, etc. As in 1A, there was a Brakeman available. In these circumstances, based on 1A, the employer had to employ a Brakeman, or have another crew perform the work (and both options, the union argued, were available to the employer).

The union further observed that the employer did not dispute the union's factual narrative. It was never asserted that the work as described did not occur; instead, the employer took the position that that there were no yard crews employed at the time, and no Brakeman available, but that was not, the union pointed out, an available defence to the improper assignment of work. The union asked for a declaration of breach and a remedy in accordance with 1A.

Employer Submissions

In the employer's submission, the union had not proved its case. Mr. John Bell, the Vice-President Operations, Western Region, testified. Distinguishing 8461 from 1A, was the fact that

1A dealt with the Freight Service, but 8461 referred to a Road Switcher Service: that made the two cases distinguishable; that meant there could be no finding that they were substantially similar based on the same set of operational facts. If that submission was rejected, it was the employer's view that the grievance must be dismissed because there was no evidence that the greivors did what they claimed. There was no evidence about the number of cars, the switch list or anything else establishing that the grievors performed the work in the manner alleged. The union had a positive obligation to call this type of evidence and failed to do so. Mr. Bell had no idea whether the work was done because the union had not proven it. Moreover, the employer was under no obligation prove the work was not done; that reversed the evidentiary burden. For these and other reasons, the employer asked that this grievance be removed from this process and redirected to the general grievance pool.

Decision on 8461

In both cases, 1A and 8461, the same thing happened leading to the same violation of the same provision of the collective agreement: the employer required a Conductor Only freight crew to yard another train prior to departing the initial terminal with their own train. The facts establish substantial activity completely unrelated to the crew's own train, which is what 1A is all about. The underlying facts are supported in the employer's own internal records and other materials as set out above. The distinction the employer attempts to draw between Freight Service and Road Switcher Service is not persuasive and is certainly not a basis to find that the work was not substantially similar. None of the cases in this award apply a standard of identical or near identical; they apply a standard of substantially similar based on the same set of operational facts (substantially similar). The purpose is to determine whether these new cases, at their heart, relate

to the consent awards and, if they do, which I find to be this case, they can provide the parties with further guidance in resolving substantially similar disputes.

In this case, there is no evidence of the employer ever disagreeing with the union's account of events, which was detailed and long available to it. Mr. Bell agreed that the crew advised the employer of what work they did after they did it. The CTT claim is illustrative of that. Mr. Bell agreed that if the crew fabricated activities on documents they submitted to the employer, that would be a problem. Mr. Bell agreed that the crew reported working on another train. There is no doubt, on the evidence, that the employer required a Conductor Only freight crew to yard another train before departing the initial terminal with their own train. The range and extent of the uncontradicted work described more than meets the substantially similar test. Asserting that the union did not give evidence about the number of cars, the switch list, etc., is insufficient to support an argument that the cases are not substantially similar when the preponderance of evidence establishes that they are. Accordingly, this grievance is allowed with the same remedy as provided in 1A.

Grievance 10555

Union Submissions

The facts of this case, the union submitted, were straightforward: the crew was called in to Conductor Only turn service. At the initial terminal they were required to perform multiple moves over many hours on other than their own train, including removing a remote locomotive from a different train and placing it in the shops. The March 2, 2016 grievance and the June 27,

2016 grievance described the activity. This and other initial terminal work – marshalling and robotizing – was not in connection with their own train. That was what 1A, and this case, were all about, in the union's submission. The yard in question was considered to have yard crews employed. This case was clearly substantially similar to 1A, the union argued, and the employer's April 29, 2016 response did not take issue with any of the facts that the union had advanced. The union again observed that where yard crews are employed, a Conductor Only crew is restricted to performing switching on their own train at the initial terminal, whether or not the yard crews were on duty. And, as in 8461, the union pointed out that the employer had the option of employing a Brakeman or having another crew perform the work. Instead, it required the grievors to do it, violating the collective agreement. The union sought the same remedy as in 1A.

Employer Submissions

Mr. Bell testified that 1A was not engaged as there was no yarding another train; instead, the grievors assisted another crew with a locomotive. That meant that this case was not substantially similar to 1A. The employer disagreed with the union's characterization of events as there was no yarding of another train before leaving the initial terminal. Also, there was no other crew in position to do the work. The fact that the employer made a without-prejudice settlement offer did not mean it agreed with the union that there had been a breach. As well, the employer argued, the events described here had nothing to do with what occurred in 1A. The employer asked that this grievance be removed from this process and redirected to the general grievance pool.

Decision on 10555

The facts put this grievance squarely within the substantially similar category and leads to the conclusion that the same result as in 1A should apply. Mr. Bell's testimony is rejected as the evidence shows that the crew was required to work on another train(s) at the initial terminal bringing it squarely within the ambit of 1A. Mr. Bell agreed that the employer never asserted that the work was not done, or that there was no breach of the collective agreement. The employer's main concern, as set out in its grievance reply, was that the 1A penalty for breach was excessive. That is not a basis to deny the grievance, nor is the absence of an available crew. The facts establish, just like in 1A, that the grievors were required by the employer to yard another train prior to departing the initial terminal with their own train. That activity is not permitted under the collective agreement, even if the grievors were more conveniently available to perform it, or even if the 1A remedy for breach is excessive in the employer's view. As the union observed in its submissions, this was not an emergency. Accordingly, the substantially similar test is more than met and the grievance must be resolved with 1A.

1B Grievances

Consent Award

The October 19, 2020 consent award stated the following:

The matter to be decided in this case is whether the company can require a Conductor Only freight crew to make a set off from their train prior to departing from the individual terminal.

The answer to that question was yes, subject to the Letter re: Conductor Only Final Terminal dated August 31, 1992 and its application, both east and west.

The November 26, 2020 Supplemental Award dealt with an interpretation dispute that arose after the 1B consent award was issued. That Supplemental Award stated that Conductor Only crews could continue to do two things:

1. A Conductor Only Crew could pick up a car or block of cars at a yard within a final terminal en route to the destination yard provided the cars returned to the train. Conductor Only crews could not be deployed to move a car or cars around a yard or terminal, but to pick up a car or cars with the proviso that they were continuing through with the train.
2. A Conductor Only Crew could set off a car or block of cars at another yard within the initial terminal during the departure move.

It is clear that this Letter [Letter re: Conductor Only Final Terminal dated August 31, 1992] makes sense from an efficiency perspective – to allow the outgoing crew to take a car or cars to the next yard within the terminal on their departure from the terminal – but it is also clear that the set off of cars cannot be within the same yard but must be "at another yard with the initial terminal…." If it is a one-yard terminal, the exception in the Letter cannot, given this language apply. To conclude otherwise would be to strip these quoted words of any meaning.

Grievance 18417

Union Submissions

In the union's submission, 1B and the Supplemental Award were crystal clear in what Conductor Only crews could, and could not, do. According to the union, what happened in 18417 was that the crew was directed to switch some cars but not cars pertaining to their own train, and the switched cars did not depart the terminal with their train. This activity was set out at UBD beginning at p. 220. Simply stated, there was a switch of cars, not bad orders, in this one-yard terminal that had nothing to do with their train. The exceptions in 1B did not apply on the facts. There were yard crews employed at this one-yard terminal, further restricting what work can be assigned. The crew was not provided with a Brakeman when one was available on the common

spareboard. Had a Brakeman been assigned, the union would not have grieved. The factual details of what had occurred were set out in the union's May 13, 2020 and August 21, 2020 grievances. The employer's response is dated July 10, 2020. Further facts are set out in the December 1, 2020 Joint Statement of Issues.

Employer Submissions

In the employer's submission, this case failed to meet the substantially similar test. 1B dealt with whether the employer could require a Conductor Only freight crew to make a set-off from their own train prior to departing. This case, on the other hand, involved leaving cars behind having never lifted them on to the train and was not, accordingly, substantially similar as the cars in question were never on the train to begin with. Mr. Bell asserted that the grievance was not proven, although he agreed that the crew moved cars that were not part of their train within the same yard. In his view, however, these activities were not a set-off. The employer argued that this case was not substantially similar to 1B because there were cars blocking the train, and moving blocked cars was different than setting them off. Notably, in the employer's view, the union did not even refer to 1B or the Supplemental Award in the Joint Statement of Issues. There were further impediments to concluding that this case was substantially similar to 1B as there was a typo in the grievance and so the documents the union advanced could not be relied upon. At the very least, caution in assessing the union's evidence was called for. Moreover, as 1B did not provide for monetary relief, no monetary relief could be awarded and, at best, all that could be awarded was a declaration of breach.

Decision on 18417

The facts establish that this lead case falls within the ambit of 1B. As well, the Supplemental Award, properly applied, establishes a breach. A single typo does not lead one to conclude that the company documents, UBD starting at 213, nor the facts relied upon and set out in the union grievance correspondence, are unreliable. As 1B provides, the Conductor Only crew can pick up a car or block of cars at a yard within a final terminal en route to the destination yard provided that the cars continue on the train. Conductor Only crews cannot be deployed to move a car or cars around a yard or terminal but can pick them up provided they are continuing through with the train. And Conductor Only crews can set off a car or block of cars at another yard – not in a single yard – within the initial terminal. Having moved cars that had nothing to do with their own train within the single yard, substantial similarity is established. These cars were not part of their train; these were cars blocking their train. Indeed, Mr. Bell acknowledged in his evidence that the crew moved cars not part of their train within the same yard. Mr. Bell testified that while the grievance was addressed to him, he did not recall it and did not request any further information in preparation for his testimony. Mr. Bell did not know whether the employer ever responded to the grievance.

The grievance is allowed. The appropriate remedy – as one was not set out in 1B – is remitted to the parties. There is no reason to limit a remedy for a breach to a declaration, although that outcome is, of course, possible where appropriate. Presumably the remedy pattern in the other consent awards will inform resolution of this issue.

Grievance 14713

Union Submissions

In this case, the Conductor Only crew was required to take locomotives and rail traffic from Coquitlam to VIF. Upon arrival at VIF, switching commenced: the crew built Train 100 – not their train – and pulled and spotted all plant tracks, i.e., handling cars that did not pertain to their train. VIF is considered to have yard crews employed. A grievance was filed on May 29, 2018, and advanced and further detailed on September 7, 2018; both documents replete with details. Other materials describe activities – set out in the UBD – for example, the employer's response at UBD p. 238. The union argued that the employer never disputed that a Conductor Only crew was used within terminal limits to perform work not pertaining to their own train. Had the employer provided a trainman or assigned a VIF-based crew or VIF ad hoc assignment, there would have been no dispute, but it did not and there was. The union sought compensation for the identified affected employee.

Employer Submissions

In the employer's submission, the union failed to identify any of the cars that the crew set off at the initial terminal that did not depart on their train. It was not even clear to the employer that the crew's train ever even left the yard. Mr. Bell testified to a general lack of information. The employer could not know with any certainty what work was assigned or performed. There was, therefore, the employer argued, no evidentiary basis to find for the union as substantial similarity had not been proven and there was no jurisdiction to award a retroactive remedy in circumstances where 1B did not provide for a remedy. Simply put, the union had the obligation

of proving a breach on the facts and had failed to discharge that burden. The bottom line was that Mr. Bell did not know what had occurred, and in these circumstances, there could be no finding that 14713 was substantially similar to 1B. In any event, and at most, there could only be declarative relief.

Decision on 14713

The employer's grievance response – UBD at p. 238 – does not engage with the facts of this case. The facts establish a collective agreement breach: the crew was building a train and moving cars unrelated to their own train around a yard and not within the 1B exceptions. This makes 14713 substantially similar to 1B. As the supplemental award states, "Conductor Only crews could not be deployed to move a car or cars around a yard or terminal, but to pick up a car or cars with the proviso that they were continuing through with the train. A Conductor Only crew could set off a car or block of cars at another yard within the initial terminal during the departure move." The directed activity in this case does not fall within these exceptions. The collective agreement has been breached. The appropriate remedy – as one was not set out in 1B – is remitted to the parties. There is no reason to limit a remedy for a breach to a declaration, although that outcome is, of course, possible where appropriate. Presumably the remedy pattern in the other consent awards will inform resolution of this issue.

Grievance 511

Union Submissions

What happened here, the union submitted, was that a Conductor Only crew, prior to departure, was instructed to move cars that did not pertain to their own train within the yard as set out in the UBD. The switch list was referred to (at UBD p. 246). Those cars did not depart with them. None of these cars were bad order cars, but stayed in same yard due to tonnage, in a yard deemed to have yard crews employed. No Brakeman was provided, although one was identified and available. Likewise, another crew could have been engaged to perform the work but was not. The union asked that the grievance be allowed.

Employer Submissions

The employer objected to the inclusion of this grievance as it arose following issue of the consent awards and asserted there was no jurisdiction to hear this case. In any event, in the employer's view, the only possible remedy was a declaration. While Mr. Bell did not testify, the employer took the position that the union's grievance failed to provide sufficient information to establish the validity of its allegations and also argued that the activities performed did not constitute switching.

Decision on 511

Notwithstanding the employer's assertion on point, as noted above, jurisdiction was specifically retained as was requested by the parties and set out in the consent award: "This award is intended

to provide guidance for past disputes, including those in abeyance and future disputes." The facts are substantially similar – and are established in the evidence – as the Conductor Only crew was required to move cars that did not pertain to their own train. As the supplemental award states: "Conductor Only crews could not be deployed to move a car or cars around a yard or terminal, but to pick up a car or cars with the proviso that they were continuing through with the train." That is not what happened here and while the union's facts were denied they were not contested. The appropriate remedy – as one was not set out in 1B – is remitted to the parties. There is no reason to limit a remedy for a breach to a declaration, although that outcome is, of course, possible where appropriate. Presumably the remedy pattern in the other consent awards will inform resolution of this issue.

1C Grievances

Consent Award

The October 19, 2020 consent award stated the following:

> At issue in this case is whether the company can require a Conductor Only freight crew to lift cars at the initial terminal and also later require that they set off those cars prior to departing the initial terminal.
>
> …
>
> The case engages Article 67.02 of the collective agreement. Given that provision, the answer to this question is, in general, no. However, there may be circumstances such as extreme weather – which could not be foreseen at time of call – where it is necessary to set off cars prior to a departure in which Article 67.02 would not be violated. Absent such exceptional circumstances beyond the company's control, however, and to be assessed on a case-by-case basis, Article 67.02 precludes this.

Grievance 8882

Union Submissions

The applicable facts, in the union's view, as set out in the UBD could be readily summarized. The Conductor Only crew discovered on departure that their train was blocked. This was not an exceptional circumstance. The crew had to move cars that had nothing to do with their train. There were yard crews employed at the terminal. The union set out the details about what happened (April 29, 2015 and August 24, 2015, claim sheet, UBD p. 260). The employer responded on June 26, 2015, that there was no breach as the crew was responsible for moving bad orders but, the union submitted, even assuming this to be true, the general prohibition on requiring crew to lift cars and set off cars prior to departing applied and there were no exceptional circumstances. The union requested a remedy in accord with 1C.

Employer Submissions

In the employer's submission, this case failed on the substantially similar test. IC related to situations where the crew lifted cars at the initial terminal and then set them off prior to departing. In 8882, the crew moved cars that were blocking their path. As Mr. Bell testified, all the crew did was move cars that were in their way. Moving cars, he explained, was not the same as lifting them. Accordingly, in the absence of a definition of lifting in the collective agreement, determining what was a lift and what was a move was a matter of management rights.

Decision on 8882

Notably, the key facts were not disputed; their characterization was what was placed in dispute. The cars were lifted/moved and set off. The company cannot require a Conductor Only freight crew to lift cars at the initial terminal and also later require that they set off those cars prior to departing the initial terminal. A blocked train is not an exceptional circumstance. This is substantially similar to 1C – lifting and setting off cars at the initial terminal – and the same remedy applies. There were no exceptional circumstances. Remedy in accord with 1C award.

Grievance 4242

Union Submissions

The facts established, the union observed, that the crew moved, i.e., lifted and set off, cars that had nothing to do with their train, as outlined on the switch list (UBD p. 268). They had to move these cars to get to their cars for their train. The relevant facts were outlined in the grievances filed on April 25, 2012, and December 3, 2012, not to mention the Ex Parte Statement of Issue. The cars that were handled did not depart the terminal with the train in question. There were yard crews employed and, notably, they were on duty at the time. There were no exceptional circumstances. The union asked that the grievance be allowed and the 1C remedy awarded.

Employer Submissions

All that happened here, the employer argued, was that the crew was instructed to move five cars to access their train. The cars were moved to the adjacent track. This was, the employer pointed

out, completely different from the facts in 1C (para. 104 company brief) where cars were lifted in one yard and set off in another. The employer's grievance response stated that the switching pertained to their own train (UBD p. 274). The cars were, Mr. Bell testified, not set off but set over. As the cases were not substantially similar, 4242 should, the employer argued, be moved to the general grievance pool.

Decision on 4242

The facts establish that this case is substantially similar to 1C. The crew was required to lift and set off cars that had nothing to do with their train, as the union pointed out at the time (UBD p. 268). It is accurate to say that the employer's April 4, 2014 response states that "the switching performed on the date in question was pertaining to their own train…." However, that is not correct as the cars were not pertaining to their own train. The crew had to move these cars to get to their cars for their train. The company cannot require a Conductor Only freight crew to lift cars at the initial terminal and also later require that they set off those cars prior to departing the initial terminal. This is substantially similar to the stated issue in 1C and the same remedy applies. There were no exceptional circumstances. Remedy in accord with 1C.

Grievance 13207

Union Submissions

In the union's view, the evidence established that this Conductor Only crew was required to perform switching work that had nothing to do with their own train as outlined in the switch list

(UBD starting at p. 293). The union had no objection to the crew building its own train; what it took issue with was the extensive switching of other traffic and the breaking down of an unrelated train. That was the job of the yard crew, not the Conductor Only crew. The switch list, which the union referred to, made it clear that the crew was required to traffic to several other tracks, again not related to their own train. There was considerable lifting and switching – all documented – work that took almost five hours to complete, and the cuts of cars were left in various tracks and had no connection with the crew's own train. The facts were set out in the grievances dated May 1, 2017, and August 10, 2017. Moreover, this was not, the union submitted, marshalling their own train: it was setting off cars to another track that had nothing to do with the train, exactly what had occurred in 1C, making the two cases substantially similar. There were yard crews on duty at time and no exceptional circumstances. The employer could have engaged a trainman or yard crew but did neither. The union asked for a 1C remedy.

Employer Submissions

In the employer's view, the union's facts were incorrect and, in any event, had nothing to do with the circumstances of 1C. All that had occurred was that when assembling their own train, the crew encountered other cars. The crew did not set off cars but built their train. Put another way, all the crew was doing was marshalling the cars prior to departure. Marshalling was not substantially similar to 1C. The employer asked that this grievance be diverted to the grievance pool.

Decision on 13207

13207 is substantially similar to 1C. The crew was building/marshalling their train, but they were also lifting and setting off other cars unrelated to their own train prior to leaving the initial terminal: the exact same thing in issue in 1C, the exact same core issue that 1C was intended to address. The switch list – UBD p. 293 – illustrates the extent of the work. The issue is lifting and setting off prior to departure. The work that was performed, on the evidence before me, went beyond switching cars that pertain to the crew's own train: the crew switched cars that had nothing to do with their train, cars that remained at the terminal upon their departure. The employer's response dated June 21, 2017, does not address the work that was done that had nothing to do with the crew's own train. There were yard crews and a trainman available who could have and should have been relied upon. There are no exceptional circumstances. Same remedy as in 1C.

2A Grievances

Consent Award

The November 12, 2020 Consent Award stated the following:

> The issue in dispute concerns the ability of the company to require inbound Conductor-Only crews at the Final Terminal to make a set off of cars into a number of tracks where, based, on the length of the tracks, a lesser number of tracks could have been used.

The grievance was allowed as the train was set off in four tracks when it could fit into three: "The language of 67.02(4) requires doubling to the least amount of tracks necessary to yard the train within the final terminal" and a financial remedy awarded.

Grievance 6330

Union Submissions

In the union's submission, upon arrival at the final terminal, the crew was required to perform work far exceeding what was permissible under the collective agreement and directly engaging the restrictions of 2A, including setting off various cars in various locations requiring six separate moves, etc. There was no switch list because the crew received instructions by radio. The union submitted that these activities vastly exceeded the restriction on doubling the train using the least amount of tracks necessary. There was a yard crew on duty and no Brakeman provided. Details of the excess work were provided in the union's grievances (UBD starting at p. 308). It was notable, the union submitted, that the employer never disputed the extra and non-collective agreement compliant work that was performed; it simply mischaracterized it.

Employer Submissions

Mr. Bell testified that the employer implemented 2A by ensuring that work performed was done with the least number of tracks, which he said was what happened here. It took some back and forth – which was allowed. What mattered, the employer argued, was not the number of moves, but whether a lesser number of tracks could be utilized, and in determining that the length of the tracks was a relevant and governing consideration. The union had not provided any evidence that the cars could have fit within a lesser number of tracks. The employer disputed, in its grievance reply, whether the tracks were sufficient in length for the entire train. On this basis alone, the grievance was not properly a part of this process, in the employer's submission. In addition, the

employer argued that this 6330 was not substantially similar to 2A. The employer also took the position that 2A did not provide for payment to any crew for events that predated it.

Decision on 6330

Consent Award 2A speaks about using the least number of tracks, not the moves required to yard the train. Nevertheless, the evidence establishes that a smaller number of tracks could have been used. Mr. Bell testified that the crew used three tracks to yard that train but put the cars in two tracks. The purpose of the Conductor Only provisions must be borne in mind: to limit what work can be assigned at the initial and final terminals. This case is substantially similar to 2A. There is an additional observation. The employer asserted that "Consent Award 2A did not outline and provide for any payment to a trainperson for events that pre-dated the Consent Award 2A" (para. 120). That is not correct. 2A states: "On a retrospective basis, affected employees with existing claims as of the date of the hearing, where these facts are established, to be paid 75 miles." Same remedy as 2A.

Grievance 12511

Union Submissions

In this case, the union asserted, it was required to do multiple switches on multiple tracks and other work at the final terminal. The crew's train was 2806 feet in length and the relevant track had capacity for 6000 feet. These facts, the union observed, were uncontradicted. Accordingly, the union argued, it should have been yarded in the single track. Instead, the crew was required

to perform multiple switches on multiple tracks and other work at the final terminal. Again, the union observed, there were no perishables, etc. Grievance documentation outlined the salient facts and were referred to. The union submitted this case was governed by 2A and asked that the same remedy be awarded.

Employer Submissions

There was, the employer observed, no jurisdictional basis to hear this grievance as it had nothing to do with 1A or the collective agreement provisions at issue. It had to do with the collective agreement's Additional Switching provisions, not those engaged by the 2A.

Decision on 12511

The grievance is allowed and the 2A remedy applied. The train could have, and should have, been yarded on to one track as the uncontradicted evidence – Mr. Bell did not testify – was sufficient room. The length of the train and the track was not disputed. That is what makes this case substantially similar to 2A. That was the heart of the issue in dispute in 2A and 12511. Same remedy as 2A.

2B Grievances

Consent Award

The November 12, 2020 Consent Award stated the following:

The issue in this case concerns the utilization of a Conductor-Only crew to perform work at the final terminal that involved spotting a customer facility within the final terminal. Spotting involves the placement of specific cars at specific locations within the customer facility for the purposes of meeting customers' requirements. This is to be distinguished from the crew yarding its train in a customer facility within the least amount of tracks necessary (per Article 67.02) where possible on one track or doubling as necessary.

The award noted that it was consistent with the Conductor Only provisions to require a Conductor-Only crew to yard their train at a customer facility, adding that the Company cannot require the Conductor Only crew to perform extra moves beyond that. A monetary remedy for breach was provided.

Grievance 4865

Consent Award

The facts as pled fall within 2B and the trainman to be paid 75 miles.

Grievance 13991

Union Submissions

The union noted that upon arrival at the final terminal customer facility the crew was required to switch and spot when the entire car length would have fit into a single track at the customer facility, but the crew was directed to place cars in three additional spots. These extra moves were not, the union argued, allowed under 2B. The UBD contained grievances and other materials relating to this spotting and other non-collective agreement compliant activity, and the union referred to key documents in its submissions. The union argued that the conclusion was inescapable that the work involved excess switching assigned to a Conductor Only crew at a

customer facility within the final terminal and therefore fell under the rubric of 2B as it was substantially similar. It asked for a remedy in accordance with its terms.

Employer Submissions

According to the employer, 2B was not engaged and the facts were not substantially similar in any event. Other collective agreement provisions – Additional Switching – may be applicable. Moreover, there were no yard engines on duty or even employed. The employer asked that this grievance be returned to the general pool.

Decision on 13991

At the outset it must be observed that 2B referenced 47.15(3). The presence of yard engines is irrelevant. The grievance is substantially similar to that in 2B. Consent award 2B requires a Conductor Only crew to yard their train at a customer facility but provides that the Company cannot require the Conductor Only crew to perform extra moves beyond that which, the evidence establishes, happened here. The activity that was directed is beyond what was permissible and the grievance is allowed with the 2B remedy to follow.

Grievance 10016

Consent Award

The facts as pled fall within 2B and the engineer to be paid 100 miles at yard rates.

2C Grievances

Consent Award

The November12, 2020 award states:

The issue in this case is whether the company can require a Smiths Falls Conductor on a Conductor-Only crew, after yarding his train at the destination yard in the Montreal Terminal, to lift locomotives not pertaining to their train from the destination yard (Hochelaga) and transfer them to the St-Luc Yard.

The answer to that question was no. The consent award noted: "The collective agreement refers to 'own train.'" A go backwards and go forward remedy was provided.

Grievance 9926

Union Submissions

In this case – set out in grievance documents which the union reviewed – the Conductor Only crew arrived at their Final Terminal where there was a crew change. After the crew change was complete, the Locomotive Engineer was required to go to a different track and operate a locomotive to the shop track. That engine had nothing to do with their own train. The union argued that after the crew had yarded their own train they could not be assigned additional transfer work. There were yard crews at this final terminal, although whether there were yard crews on duty was immaterial in the union's view. Likewise, the union argued that the case still fell into the substantially similar category even though the transfer was not to a different yard. The only issue to be determined – again the nub of the dispute – was whether the assignment pertained to the crew's own train, which it clearly did not. In the union's view, this improper assignment was a violation of the collective agreement just like in 2C and it asked that the same remedy be awarded.

Employer Submissions

According to the employer, this case and 2C were not substantially similar. Other collective agreement provisions – Additional Switching – may be applicable, further distinguishing the two. In any event, 2C had to do with transfers to a different yard; that did not happen here. The employer asked that the grievance be directed to the general pool.

Decision on 9926

The crew was required to lift and move a car that had nothing to do with their own train. This is established in the evidence. Whether it was moved within or outside the terminal is immaterial when was what is really in issue is identified. Inside or outside the final terminal is not the kind of fact that can be persuasively relied upon to distinguish 9926 from the 2C. The crew yarded the train and was then required to perform other non-collective agreement compliant work. That is what matters. The grievance is substantially similar to 2C. Same remedy as 2C.

Grievance 14314

Union Submissions

In the union's submission, after arriving at the final terminal and their train yarded, the crew was required to do additional work that had nothing to do with their own train, again as set out in the grievances and other materials in the UBD. Two locomotives were lifted that had nothing to do

with their own train. It was not doubling work to the extent necessary. There were yard crews at this terminal. A 2C remedy was requested.

Employer Submissions

The employer argued that the facts were not substantially similar. Consent award 2C also had to do with the transfer of cars and different yards. It asked that the grievance be sent to the general pool.

Decision on 14314

The grievance is allowed as the work involved is substantially similar to 2C as the work assigned had nothing to do with the crew's own train. There was no serious dispute about whether the non-compliant work was done. The location has nothing to do with the identification of the real issue in dispute and determination whether the issue here is the same as in 2C. And the answer to that question is yes: in both cases the lifting cars after yarding their train. In that way 14314 engages the core issue in 2C. Same remedy as in 2C.

Conclusion

For the reasons set out above, the cases are within jurisdiction and the disposition of the various matters in dispute as set out in this award, together with the consent awards, also agreed upon at the hearing and set out, will, hopefully, provide further guidance to the resolution of remaining and future grievances in dispute.

I remain seized with the implementation of this award.

DATED at Toronto this 7th day of April 2026.

"William Kaplan"

William Kaplan, Sole Arbitrator