

IN THE MATTER OF AN ARBITRATION

BETWEEN:

Canadian Pacific Railway Company

and

Teamsters Rail Conference

(Grievance Regarding Being Turned Back to the Away From Home Terminal)

Before: William Kaplan
Sole Arbitrator

Appearances

For the Company: John Bairaktaris
Director, Labour Relations
Canadian Pacific Railway

David Pezzaniti
Legal Services
Canadian Pacific Railway

For the Union: Ken Stuebing
Caley & Wray
Barristers & Solicitors

The matters in dispute proceeded to a hearing in Toronto on September 3, 2019.

Introduction

This case concerns the grievances of Locomotive Engineer Ellery Ast and Conductor Frank Meeser, (hereafter “the crew”), both of whom are Revelstoke-based employees: Revelstoke is their Home Terminal. The following facts, summarily stated, give rise to the current dispute.

On June 9, 2017, the crew operated a train from Revelstoke to Kamloops, completed the assignment, yarded their train and went off duty. Later that day, the crew operated another train, straightaway, one intended to travel from Kamloops to Revelstoke. However, because of a flood, they were required to tie their train down enroute on the Shuswap Subdivision and they were transported back to Kamloops – the Away From Home Terminal (hereafter “AFHT”).

The Company changed their class to turnaround service. The crew submitted an IP claim for 100 miles for having been turned enroute, and this claim was denied. A joint grievance followed, the parties submitted detailed briefs of evidence and arguments, and the matters proceeded to a hearing held in Toronto on September 3, 2019.

The Collective Agreement

While both parties referred to various collective agreement provisions, at the heart of this case is the interpretation of the following provision:

68.01 STRAIGHTAWAY AND TURNAROUND SERVICE

...

(2) Straightaway and Turnaround Service

Trainpersons will be notified when called whether for straightaway, turnaround, or turnaround combination service (TCS) as provided in Article 6 and 7 and will be compensated accordingly.

Changes from straightaway, turnaround or TCS will not be made unless necessitated by circumstances which could not be foreseen at time of call, such as accident locomotive failure, washout, snow blockage or where line is blocked or as provided in Article 6 or 7.

In the event a Trainperson books rest on a straightaway trip enroute from home terminal and, such Trainperson is replaced by a relief Trainperson, the Company may change the call to turnaround service in order to comply with Article 18 and/or regulatory requirements. Additionally, where no notice to book rest enroute has been provided, the Company may change the call to turnaround service in order to comply with Article 18 or unforeseen circumstances.

When a call is changed in the application of this clause, the Trainperson will be considered from duty at the location at which rest was taken, or is turned, and will be paid as a straightaway trip to that location. The Company will provide or arrange transportation for the Trainperson back to the home terminal either when replaced, after rest expires, or is turned and they will be paid 100 miles.

Position of the Parties

In the union's view, when the Company turned the crew back at Shuswap Subdivision it violated the collective agreement as a straightaway cannot be turned en route back to the AFHT. The crew had booked rest and had to be transported to their Home Terminal in a vehicle provided by the Company, or on their own train or another train. The union sought declaratory relief or, in the alternative, assuming for the sake of argument that the employer can change the call and send the crew back to the AFHT, that the crew be compensated for their losses: 100 miles for each affected employee.

For its part, the Company takes the position that the three collective agreement paragraphs set out above, most particularly, the second and third, must be read together and when they are the conclusion is inescapable that they have no application to the facts of this case pertaining as they largely do to booking rest. A review of an earlier iterations of these provisions, namely

as set out in the 1989 collective agreement and in a 1995 Memorandum of Agreement buttressed this submission. Simply put, the Company could in the factual circumstances present here, return the crew to the AFHT and could do so without the 100 mile financial penalty. The Company sought a finding to that effect.

Decision

Having carefully considered the evidence and arguments of the parties, I am of the view that the grievance must be allowed.

The language of the provision is clear. Due to unforeseen circumstances, like those at issue here, the Company was completely entitled to make changes to straightaway service – which it did here when the class was changed from straightaway to turnaround. The language of the provision then provides for one of two options: either arranging transportation of the Trainperson back to their Home Terminal or, if turned, payment of 100 miles. The “or” in the collective agreement is dispositive. It provides the Company with a choice, and the one it made here was also fully justifiable on a business case as it is uncontradicted that the crew was needed in Kamloops and it would have made no sense to send them to Revelstoke thereby requiring the Company to transport a different crew from Revelstoke to Kamloops. The fact that the crew booked rest did not create any requirement that they be returned to their Home Terminal, nor did it preclude the Company from changing the class to turnaround and sending them to Kamloops.

The Company introduced evidence of earlier iterations of the language in question, but respectfully those earlier iterations, dating back decades, are not helpful as these provisions have been changed in more than one respect, and they simply do not meet the basic test for relying on bargaining history or otherwise as an aide to interpretation. One is left with the collective agreement language, and it is clear and compelling: the company can, in certain circumstances change the class, of service and if does so, it can return the crew to their Home Terminal **or**, if turned, pay them the 100 miles.

Accordingly, and for the foregoing reasons, the crew is each entitled to compensation for 100 miles.

At the request of the parties, I remain seized with respect to the implementation of this award.

DATED at Toronto this 6th day of September 2019.

“William Kaplan”

William Kaplan, Sole Arbitrator