

IN THE MATTER OF AN INTEREST ARBITRATION, PURSUANT TO THE
RESTORING RAIL SERVICE ACT, 2012

BETWEEN:

Canadian Pacific Railway Company

and

**Teamsters Canada Rail Conference, on behalf of Running Trade Employees
and Rail Traffic Controllers**

Before:

William Kaplan
Arbitrator

Appearances

For the Employer:

Marc Shannon, counsel
Katherine Bilson, counsel
Peter Edwards, VP IR & HR
Rick Wilson, AVP IR
Dave Freeborn
Kathie Brown
Wes Peters
Mark Rickerby
John Bairaktaris
Nick Crook, Towers Perrin

For the Union:

Michael Church - Counsel
Douglas Finson - Vice President, TCRC
Susan Chortyk - Professional Consultant
John O'Grady - Professional Consultant
Shelly Brownlee - General Chair, TCRC-RCTC

Kari Essary - National Officer, TCRC-RCTC
Dave Olson - General Chair, TCRC-CTY West
Dave Fulton - Vice General Chair, TCRC-CTY West
Benoit Brunet - General Chair, TCRC-LE East
Mark Hamel - Vice General Chair, TCRC-LE East
Bruce Hiller - General Chair, TCRC-CTY East
Wayne Apsey - Vice General Chair, TCRC-CTY East
Dave Able - General Chair, TCRC-LE West
Greg Edwards - Vice General Chair, TCRC-LE West
Harvey Makoski - Vice General Chair, TCRC-LE West
Guests / Potential Witnesses:
Rex Beatty - President, TCRC (former General Chair, CN-CTY)
Roland Hackl - General Chair, TCRC-CTY West CN
Guy Scarrow - Retired former General Chairman/
Vice President CN / Chief Union Negotiator

The issues in dispute proceeded to a mediation in Calgary on July 26, 27 & 28, 2012 and Toronto on September 1, 2012. A hearing was held in Calgary on December 8 & 9, 2012.

Introduction

This arbitration arises by mandate of Parliament pursuant to the proclamation of the *Restoring Rail Service Act, 2012* (hereafter “the Act”). The Act was passed because Canadian Pacific Railways (hereafter “the employer” or “CP”) and the Teamsters Canada Rail Conference (hereafter “the union”) were unable to reach a negotiated settlement upon expiry of their collective agreements. Under section 8 of the Act, the arbitrator is required to “decide all matters relating to the amendment or revision of the collective agreement that, at the time of the appointment, are in dispute between the parties.”

At the request of the parties, a mediation was held in Calgary on July 26, 27 & 28, 2012 and then in Toronto on September 1, 2012. That mediation was useful in identifying and confirming the agreed upon items and more sharply focusing the issues remaining in dispute. A hearing on these outstanding issues was held in Calgary on December 8 & 9, 2012. It should be noted that in view of these mediation efforts it proved impossible to meet the deadline imposed by the Act. Accordingly, on September 8, 2012, with the consent of the parties, I wrote the Minister, the Hon. Lisa Raitt, to request an extension. At that time, I expressed my appreciation, and that of both the employer and the union, for the assistance that the Minister and her officials had provided the parties over the course of the dispute. The Minister granted an extension that permitted the completion of the case with only a short delay.

Background to the Dispute

This is a long and mature collective bargaining relationship. The last labour dispute occurred in 1987 as part of a national strike involving all rail unions. Since that time, the parties have successfully negotiated and ratified six collective agreements. There are only two exceptions to this: the first was the 1995 interest arbitration process mandated by federal return to work legislation (even though the parties were actively bargaining and had nothing to do with the labour dispute that precipitated that legislation), and the second was the 2003 Rail Traffic Controllers legal strike.

The current collective bargaining round began in October 2011 and continued into 2012. Conciliation was initiated on February 17, 2012. Conciliators were assigned in early March 2012. Conciliation took place in Calgary March 5-9, 2012 in Calgary. Further conciliation was held on March 27-31, 2012 in Montreal, April 16-27, 2012 in Vancouver, May 7-11, 2012 in Toronto, May 15-20, 2012 in Calgary and May 21-27 in Ottawa. On May 23, 2012 a nine-day national strike began. Legislation ending the strike and referring the outstanding issues to arbitration was proclaimed on May 31, 2012 and came into effect the following day.

General Overview

The union is comprised of Rail Traffic Controllers (RTC) and Locomotive Engineers and Conductors, Trainmen and Yardmen (“the running trades” or “RTE”). There are approximately 5000 members of the bargaining units. They employer operates 24 hours a day, every day of the year.

Criteria

It is well-established, and this was addressed in detail by both parties in their written submissions and at the hearing, that the four criteria that inform interest arbitration awards are replication, comparability, ability to pay and general economic and contextual factors. Of all of these criteria, replication, that is attempting to replicate in an award outcomes from free collective bargaining, is the most important.

Other Matters

A number of issues in dispute were resolved by the parties during bargaining and at mediation. At the request of the parties, I direct that the new collective agreement consist of the agreed-upon items, the un-amended portions of the expired collective agreements and this award disposing of the remaining items in dispute. Unless directly dealt with in this award, all outstanding employer and union proposals are dismissed. All awarded items come into effect date of award unless otherwise indicated.

Award

1. Wages:

January 1, 2012, 3% lump sum for the RTC, 0 for RTE.

2. Subdivision Run Times:

Resolved as per agreement of the parties reached at the hearing.

3. Fatigue Management:

Add new Article to 3 collective agreements that apply to the Locomotive Engineers in the Eastern Regions, and the Conductors, Trainmen and Yardmen in the Eastern and Western Regions; and add to existing article

32.01 of the collective agreement that applies to the Locomotive Engineers in the western region, to reflect the following;

xx.xx An employee being physically unfit for duty will report same to the crew management centre, so that the employee may not be called. The employee will not be disciplined for "booking unfit".

4. Union Security:

Replace current articles in Collective Agreements with the following:

- (1) Employees holding permanent, Company supervisory positions on or before July 14, 1995, who also hold seniority rights in any craft represented by the Union will continue to accumulate bargaining unit(s) seniority to July 14, 1996, after which time their seniority will no longer accrue.
- (2) Any employee appointed to a Company supervisory position on or subsequent to July 14, 1995, who also holds seniority rights in any craft represented by the Union will become frozen immediately.
- (3) For the purposes of this Article, the following positions are deemed not to be supervisory positions:
 - Positions of Referral Agent with the Employee and Family Assistance Program.
 - Any other such position that may be mutually agreed upon, from time to time, by the parties to this collective agreement.
- (4) After an individual appointed to a Company supervisory position under the provisions of 1) or 2) above is no longer accruing seniority pursuant to the provisions of this Article, their name will be immediately removed from the seniority list(s), and placed in a separate column on such list and shown as "Seniority Frozen on." followed by the date on which the individuals seniority has been frozen.
- (5) An individual whose seniority has been thus frozen pursuant to this Article, who chooses to return to their former position in the bargaining unit, will, on the day they return to the bargaining unit, have their name placed back on the seniority list(s) in the position, relative to the amount of seniority they accumulated up to the point of having their seniority frozen. They will be notified, in writing, of what their new seniority number is and where they stand on the seniority list(s) relative to other individuals on such list(s), the date of their return to the bargaining unit as well as the date of their entry into service and the date their seniority was frozen, copies of which will be provided to the Union and posted in bulletin books over the entire seniority district(s). They will immediately begin to accrue seniority from the date of their return to the bargaining unit and continue to do so in accordance with existing seniority rules.

(6) To enable affected employees the opportunity to make an informed career decision, these provisions shall take effect 60 days after the coming into force of the Collective Agreement.

5. Length of train/length of run allowance:

Effective January 1, 2014, change the grandparenting date in Section IB(j) of the RTE Memorandum of Settlement dated December 5, 2007 by replacing "January 1, 2008" with "January 1, 2014".

6. Pension:

New Article in Collective Agreements

Past Service: (service prior to "change date") cap of \$2,200.00 per year of service: provided that if the member's pension for service prior to the effective date of the change, based on his Highest Plan Earnings and Average YMPE at that date is greater than the revised pension limit in effect at his date of retirement, termination or death, then the member's benefit will not be reduced to the revised pension limit in effect at his date of retirement, termination or death.

Future Service: Cap of \$2,200.00 per year of service on and after "change date".

Benefit Formula: No change

Contribution Rates: 0.5% reduction for RTE contributions below and above YMPE

Effective January 1, 2013, new employees will be subject to pensionable service capped at \$1,715 per year of service.

Benefit Formula: 1.7% / 2.0%.

Contribution Rates set at 4.3% up to YMPE and 6.3% above YMPE.

Commutated value for employees determined to be terminally ill with a life expectancy of one year or less based on the medical decision of the Chief Medical Officer. Details to be jointly worked out.

The "change date" will be the date when the pension cap in this Plan for non union members is lowered to \$2200.00 or less.

Note: It is further understood that non-union members of the DB Plan have been given notice that their ability to receive unreduced commuted value when qualifying for early retirement (55 years old and 85 points) is being discontinued.

Notwithstanding any provision of the Pension Plan, or of the Collective Agreements, the Union and the Company are directed to ensure that their representatives on the Pension Committee vote in accordance with the provisions of this Article. The Company is further directed to ensure that its Board of Directors not make decisions that are inconsistent with this article.

Notwithstanding any other provisions of the Collective Agreements, it is agreed and understood that this Article can be renegotiated by the parties without limitation.

Conclusion

At the request of the parties, I remain seized of all matters until new Collective Agreements have been executed by the parties.

DATED at Toronto this 19th day of December 2012.

“William Kaplan”

William Kaplan, Arbitrator