IN THE MATTER OF AN ARBITRATION

BETWEEN:

The Canadian Pacific Railway Company

and

Teamsters Canada Rail Conference

Grievance Re: LET and Bonus Payments

Before: William Kaplan
Sole Arbitrator

Appearances

For CP: John Bairaktaris, Director, Labour Relations
Dave Pezzaniti, Assistant Director, Labour Relations

For TCRC : Ken Stuebing
Caley & Wray
Barristers & Solicitors

The matters in dispute proceeded to a hearing in Toronto on October 31, 2018.

Introduction

This case concerns two inter-related disputes. The first concerns the employer's mid-week removal of six employees in Moose Jaw from the Locomotive Engineer Training program (hereafter "LET") and their one-time very short-term (February 9-22, 2016) placement onto the trainperson's spare board mid-week, outside of the WPP, and without regard to seniority. The second dispute concerns the employer's decision not to provide these employees with a one-time $1000 bonus payment following their completion of LET, Phase Three. These two disputes proceeded to a hearing held in Toronto on October 31, 2018.

Background

LET is offered on an ongoing basis. It is governed by Article 75 of the CTY collective agreement. LET training occurs in seven phases, all of which must be completed, although not necessarily in order, to quality as a Locomotive Engineer. Phase Three can be accomplished in one of two ways: either through what is known as Working Conductor – On the Job Training (hereafter "OJT") or "One-on-One". The details and differences between the two modes need not be elaborated here except to say that the OJT may extend over a period of eighteen months and employees who participate in it are entitled to a one-time bonus payment of $1000. In general, One-on-One takes much less time to complete.

In terms of this case, and very simply stated, the six employees in question were pursuing Phase Three through One-on-One when the employer directed, it asserts, for operational reasons, that they be placed on the spare board. This, according to the union was one collective agreement breach; the other was the employer's failure to then pay them the $1000 bonus as the union took the position that once they began the Working Conductor – OJT training, even for a single shift, they qualified for that bonus. The employer disagreed taking the position that it was entitled under the collective agreement to deploy the employees for operational reasons and that both the wording and intent of the bonus was to recognize a long period of actual OJT, not mere physical presence for a single or a few shifts, especially when no OJT training took place.

Union Submissions

In the union's view, and making reference to various collective agreement provisions, the employer has the discretion to provide Phase Three training either through OJT or One-on-One, or even to use a combination of the two. However, according to Article 75.08 once LET has begun, it cannot, the union argued, be suspended except in accordance with the collective agreement. The placement of the six employees onto the spare board also, in the union's submission, affected the rights and interests of other employees.

The union argued that these actions were not saved by Moose Jaw WPP local rule item 3.6 as there were no unforeseen circumstances that would permit this assignment – and consequent setback of the LET training – and, making matters worse, the necessary consultation with the local chairperson did not take place. The whole purpose of the WPP was to eliminate mid-week displacements. Any changes had to be justified on an exacting standard, and the evidence indicated no facts that would support the conclusion that there were *bona fide* operational reasons justifying the action. Indeed, staffing levels indicated the exact opposite, in the union's submission. Accordingly, and for all of these reasons, and others, the employer could not make the mid-week change.

In terms of the $1000 bonus, the collective agreement was clear that once OJT began, and the six individuals were working as Conductors, and the union asserted that this was the case, they were eligible for the cash bonus: "The Employees while set up as Conductors continued diligently engaging themselves with on the job training to further hone their skills as locomotive engineers." Simply put, the union took the position that when the six employees were put on the spare board and worked as Conductors they began OJT and were immediately and irrevocably eligible upon completion of Phase Three for the cash bonus. However, when they submitted their claims, albeit many months later, those claims were improperly denied.

Employer Submissions

In the employer's submission, for valid operational reasons it temporarily suspended LET training. Article 75.08, relied on by the union, applied to initial mechanical and rules instructions classes, and was completely inapplicable to this case. Local Rule 3.6 allowed the employer to increase unassigned service in response to unforeseen circumstances, and in February 2016 operational demands – protecting the movement of grain trains – meant that the six employees had to be placed on the spare boards mid-week for a brief period. It was as simple as that, and nothing in the collective agreement precluded the short-term suspension of the LET. Employees were never told that the One-on-One was being converted to OJT for the

13-day period they were on the spare boards and, as importantly, no OJT occurred. The employer asked that the grievances be dismissed.

Decision .

The evidence, while not crystal clear, establishes that there was a staffing need. There is nothing in the collective agreement, at least that was brought to my attention, precluding a temporary and very short-term suspension of the LET. If the union wishes to negotiate such a provision, it is open to it to try to do so. Obviously, employer and employee interests on LET training coincide: it should be done as expeditiously as possible to provide new and needed Engineers. Documents introduced into evidence indicate that the six affected employees acknowledged that "trainees performing one-on-one training may be pulled at any time from such training to work as Trainmen, should manpower dictate."

The six employees were put to work as Conductors which is allowed. More importantly, mid-week placement may be justified for operational reasons following consultation with the local chair person. However, while the cited operational reasons may be justified, the failure to consult is not. To that limited extent, this grievance succeeds and a declaration of breach issued. There is no evidence of any damages suffered other members of the bargaining unit by the placement of the six employees.

In terms of the claim for the $1000 bonus, the evidence does not come close to establishing that OJT took place when the the six employees were working as Conductors – only two trainer payment claims were submitted for more than fifty trips (three other claims that appear inapplicable to this case were also made). Even putting the union case at its highest – that OJT training took place throughout the thirteen days – I cannot conclude that this would be sufficient to qualify for the $1000 bonus which is normally payable following a training period that extends over as many as eighteen months and that must also fulfil all of the requirements of Article 75.11. The $1000 is not payable by virtue of several weeks on the spare boards.

There is no dispute that the employer gets to decide what type of training to offer, and it is also extremely clear that management had no intention of offering OJT during this two-week period (and the statement of Marshall Karn establishes as much). It is noteworthy that the employees immediately returned to One-on-One. Again, assuming a theoretical best union case, there might, in some situations, be a justification for a pro-rata, but given the time period here, any payment would be *de minimis* (and would also require OJT to have occurred and the finding here is that it did not). There is no evidence, quoting the union, that the employer tried to "end run" the requirement to pay the $1000. Accordingly, and for the foregoing reasons, this grievance is dismissed.

DATED at Toronto this 12th day of November 2018.

"William Kaplan"

William Kaplan, Sole Arbitrator