IN THE MATTER OF AN ARBITRATION

BETWEEN:

Canadian Pacific Railway

and

Teamsters Rail Conference

(Annual Vacation and General Holidays)

Before:	William Kaplan Sole Arbitrator
Appearances	
For the Company:	Lauren McGinley, Asst. Director Labour Relations Francine Billings, Manager Labour Relations CPR
For the Union:	Michael Church Caley Wray Barristers & Solicitors Dave Fulton, General Chairperson CTY West, Calgary Wayne Apsey, General Chairperson CTY East, Smiths Falls Greg Edwards, General Chairperson LE West, Calgary Ed Mogus, General Chairperson LE East, Oakville Doug Edward, Sr. Vice General Chairperson CTY West, Calgary Harvey Makoski, Sr. Vice General Chairperson LE West, Calgary Greg Lawrenson, Vice General Chairperson LE West, Calgary Ryan Finnson, Vice General Chairperson CTY West

Both parties filed detailed briefs and reply briefs and the matters in dispute proceeded by way of Zoom on March 21, 2021.

Introduction

The issue in this case concerns the cancellation of scheduled vacation days in January 2018. It is un-contradicted that the employees in question – among the most senior in the company – were scheduled off duty on extended vacation until the evening of January 4, 2018 (their approved vacations were extended by virtue of the fact that December 25 & 26, 2017 and January 1 & 2, 2020 were General Holidays). However, these employees were contacted late in the evening on January 2, 2018 and instructed to book on at 2201 that evening; accordingly, to be available two days earlier than planned.

Position of the Parties

In the union's submission, the employer was not entitled to unilaterally cancel these previously scheduled vacations. The vacations had been approved and the last minute cancellation was a breach of the collective agreement, long-standing and widely acknowledged past practice, and the *Canada Labour Code*. Under the collective agreement, past practice and the *Code*, vacations in the last week of the year may, and regularly were, extended by two and up to four days depending on when General Holidays fell. In this case, the two General Holidays extended the vacation to January 1 & 2, and then the vacation was further extended to January 3 & 4 because of the General Holidays on January 1 & 2.

The company disagreed. In management's view, vacations in the final week of the year were extended to January 1 & 2, 2018 to take into account the General Holidays

of December 25 & 26, 2017. There was, therefore, no obligation to further extend vacations to January 3 &4 to take into account the General Holidays of January 1 & 2, 2018 as those dates fell outside the applicable vacation week. Put another way, the company takes the position that it is only obligated to extend the vacation period when the General Holidays fall within the scheduled vacation period. As the employees in question received their full vacation entitlement through the extension of their vacation on January 1 & 2, the company argued that the grievance should be dismissed.

Decision and Remedy

In my view, the grievance must be allowed. The employees in question had their vacations scheduled, and by virtue of the timing of the General Holidays, extended for two days. Simply put, that is the way it has to work in circumstances like this. The December General Holiday dates extended the vacation to January and the vacation was further extended by the January General Holiday dates. There is no other interpretation.

Management knew all of this and agreed to this in advance; why else would it otherwise have started calling the cohort on the evening of January 2nd asking them to sign on for duty? In any event, the documentary record is persuasive as is the past practice notwithstanding disputed issues surrounding the notice of estoppel during bargaining and the *Code*. What matters is that having scheduled vacations the

company can only reschedule them in accordance with the provisions of the collective agreement.

Remedy

The grievance is allowed.

Article 29.09 is governing. Accordingly, the remedy for each affected employee is $175 per day lost and each affected employee shall receive an additional day of vacation, or if two days were lost, two additional days of vacation, on a mutually agreed day, or dates, as the case may be.

An additional observation is in order: The collective agreement requires notice and consent to reschedule already scheduled vacation. Should there be a repetition of these events, i.e., no notice or consent, the remedy that is awarded will necessarily have to consider this in addition to the obligations under the collective agreement. It is axiomatic that scheduled vacations should only be interfered with in the most compelling circumstances.

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

Dated at Toronto this 25th day of March 2021.

"William Kaplan"

William Kaplan, Sole Arbitrator