IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN:

CPKC

and

TCRC (RTE)

Before: William Kaplan
Sole Arbitrator

Appearances

For CPKC: Myron Becker
Vice-President & Chief Labour Officer

Dave E. Guerin
Managing Director, Labour Relations

Francine Billings
Director, Labour Relations

Allan Cake
Assistant Director, Labour Relations

For TCRC: Michael Church
Ethan Lewis
Caley Wray
Barristers & Solicitors

Paul Boucher
TCRC President

Ryan Finnson
TCRC Vice-President

Dave Fulton
General Chairman – CTY West

Greg Lawrenson
General Chairman – LE West

Dennis Psichogios
General Chairman – CTY East

Joe Bishop
General Chairman – LE East

Jason Hnatiuk
Vice General Chairman – CTY West

Chuck Ruggles
Senior Vice General Chairman – LE West

Jason Diggles
Senior Vice General Chairman – CTY East

Sean Orr
Senior Vice General Chairman – LE East

Doug Edward
Senior Vice General Chairman – CTY West

The matters in dispute proceeded to a mediation/arbitration held in Toronto on April 7, 8 & 9, May 10, 2025.

Introduction

This interest arbitration is the result of a *Canada Labour Code* Section 107 referral from the Minister of Labour to the Canada Industrial Relations Board (CIRB). On August 24, 2024, the CIRB directed that all matters in dispute between Canadian Pacific Kansas City (CPKC) and the Teamsters Canada Rail Conference (TCRC) Running Trade Employees (RTE) be settled by interest arbitration. Following this direction, the parties executed a Memorandum of Agreement, authorizing the Director General, FMCS, to select an arbitrator absent agreement, and I was appointed. In consultation with the parties, a process was arrived at for the mediation/arbitration of the outstanding issues, and it proceeded in Toronto – mediation – on April 7, 8 & 9, and – arbitration – on May 10, 2025. Both parties filed comprehensive briefs and reply briefs. The TCRC participated in the interest arbitration process without prejudice to any remedy it might seek in its application for judicial review of the Minister of Labour's decision to invoke section 107 ending the labour dispute – August 22-26, 2024 – by directing interest arbitration (which the TCRC asserted violated its members' constitutional rights under the *Charter of Rights and Freedoms (Charter)*).

The terms of this award also apply to two shortline collective agreements: Kawartha Lakes Railway (KLR) and the Kootenay Valley Railway (KVR).

The Parties

CKPC operates a transcontinental railway – it operates in Canada, the United States and Mexico – providing both rail and intermodal service over a 20,000-mile network. The TCRC represents approximately 3200 RTE employees who operate trains within and between 32 terminals from

Montreal to Vancouver. The bulk of the work is operating trains from one terminal to another in unassigned service. There are more than 550 train crews (Locomotive Engineer and Conductor) operating a freight service that runs twenty-four hours a day, seven days a week.

The Bargaining

The parties began bargaining in September 2023 and met on numerous occasions between then and the August 2024 labour disruption. Even with the assistance of experienced FMCS mediators, they were unable to reach agreement on anything: Not a single union or company proposal was signed off. Accordingly, a great many outstanding issues proceeded to a multi-day mediation/arbitration.

TCRC Submissions

In the TCRC's view, had CPKC bargained in good faith, and had the Minister of Labour and CIRB not intervened, violating union members' *Charter* rights, the parties would have reached a collective agreement, or in this case, the core collective agreement and the KLR and KVR collective agreements. The union observed that previous bargaining history established that it could and would achieve freely bargained collective agreements – absent governmental/CIRB intervention – and assuming a willing, not obstructionist, employer partner. Simply put, in the union's submission, it also had a track record of achieving better bargaining results than other CPKC bargaining units. Those other collective agreements had some (limited) applicability as floors, not ceilings, if replication of free collective bargaining was given effect.

Turning first to the core collective agreement (and many of its terms would carry over as appropriate to KLR and KVR), the union argued in favour of proposed general wage increases of 3.5% in each year, increases to shift differentials, and improvements to train length and length of run allowances and Road Switcher and Yard Rates. Non-monetary priorities included the union's proposals on (i) DRPR reset breaks and its request that the May 27, 2023, Not Released Agreement (NRA) be incorporated into the collective agreement, (ii) Article 18 rest violation penalty payments, (iii) pension arrears repayment provisions, (iv) the Locomotive Engineer Spareboard Guarantee and (v) the Article 41 Ad Hoc Arbitration Process. A handful of priorities were likewise identified for KVR and KLR.

To best replicate free collective bargaining, the appropriate starting point, in the union's view, was by acknowledging that a great many items had already been agreed upon. When the bargaining proposals of the parties prior to the labour dispute were compared, it was quite clear – and the union provided a document illustrating this – that the parties had agreed, or come close to agreement, on a great many of the items in dispute. While the parties had not signed off on any of these items per se, these were agreements nevertheless and should be awarded. At a minimum, in the union's submission, it was incumbent on the company to explain, and justify, its decision to resile from these previous agreements, and near agreements, and it had failed to discharge this burden, leading to a conclusion that these agreed and nearly agreed items should be included in this award.

The TCRC also categorically rejected any suggestion that the other unions that bargained with CPKC had, in return for various economic improvements such as classification adjustments, shift

differential increases and the lump sum signing bonus, agreed to any operational flexibilities, work rule or other collective agreement revisions in exchange. There was no real proof of any of this, and the limited evidence advanced in support of this completely unproven claim was massively overstated, too little and brought forward far too late. The union asked that these CPKC submissions be dismissed.

Turning then to the reasons why its priority proposals should be granted – and those of CPKC rejected – it was the TCRC's submission that application of the regular interest arbitration criteria normally considered and applied in cases of this kind led to one conclusion: the union's proposals were fully justified. For example, there was a definite recruitment and retention crisis, as was illustrated in the uncontradicted data: In the last two years, the company hired a total of 1644 new members, 777 of whom have either resigned or dismissed. Over the last two years, another 377 employees hired prior to 2023 also resigned (paras. 220-21 union brief). The tried, true, and tested answer to a recruitment and retention crisis was, the union argued, an above-pattern general wage increase.

Notable for its absence was any company suggestion of an inability to pay; in fact, the opposite was true. CPKC was doing extremely well – as was demonstrated by revenue, income, earnings per share and operating ratio metrics, and a most positive fiscal outlook also reflected in the Canadian economy considered more generally. Even with the threat of American tariffs, the company was on record anticipating continuing growth, and profitability. While the company was doing well, its employees were not: they continued to suffer from earlier high, and ongoing,

inflation affecting the cost of everything with previous years of inflationary increases now entrenched in the cost of living. An above-pattern general wage increase was also required to address the completely unjustified wage gap between CPKC and CN rates, CN being the obvious and generally accepted external comparator. There was simply no reason, in the TCRC's view, why its members, performing the exact same work as their colleagues at CN, should be compensated up to 7% less. In the union's view, any general wage increases also had to be applied to train length and length of run allowances, and the penalty provisions.

Likewise, in the union's view, it had established demonstrated need for new language mandating that reset breaks be applied exclusively at employees' home terminals (that employees be provided with timely notice of when they will be placed on reset, and that the May 27, 2023, Not Released Agreement (NRA) be incorporated into the collective agreement). Under the *Duty and Rest Period Rules for Railway Operating Employees* (*DRPR*) Application Document it was considered best practice to provide a reset that was both scheduled and at home. Indeed, this was Transport Canada's expectation, and the practice at CN. There was no reason for CPKC to do otherwise, and the evidence of employee hardship arising from away from home terminal resets was palpable and extensively reviewed.

In the union's submission, the context also mattered: CPKC's long-standing practice of applying resets at home – not at the Away from Home Terminal – changed in early 2024 during collective bargaining. This was described by the union as a transparent attempt to alter the playing field at the bargaining table. In a related issue, there was, the union argued, a demonstrated need to

increase the penalties for rest violations (and to then keep them current through application of the general wage increase) as they were the only deterrent preventing the company form overworking employees. The pension arrears issue required attention as there was compelling evidence of individual hardship: all the union asked for was a reasonable and proportionate repayment schedule. In bargaining passes, the parties were not far apart on making changes to the Spareboard Guarantee. Replicating free collective bargaining directed the closing of this gap and incorporating consequent revisions into the collective agreement. The same observation was made about Article 41 Ad Hoc Arbitration.

Finally, the union's proposals for KVR and KLR were, in its view, completely normative. Among others, amending the KVR collective agreement to provide for bi-weekly as opposed to monthly guarantees made sense. Increasing work clothing to $300 would align with the core collective agreement. Payments under Articles 19.9 and 19.21 had not increased for years and required updating. The union proposed concessions in return for both these monetary proposals.

CPKC Submissions

In the company's submission, all normative interest arbitration criteria applied, including replication, comparability, demonstrated need, total compensation, ability to pay and general economic factors. Properly applied, these factors should, CPKC argued, lead to the rejection of the union's untoward and excessive proposals – they were costed at $400 million – and granting those put forward by the company. In its view, the union's proposals were a "completely lopsided list of wants that is indifferent to cost, reciprocity, viability or any concept of mutual gains" (at

para. 6). The company's proposals, on the other hand, could be accurately characterized, according to CPKC, as providing a generational opportunity to modernize an archaic collective agreement to provide "huge, immediate benefits to employees" (at para. 38 main brief). The parties were, however, unable to agree on a single item in collective bargaining, leading to the labour dispute. This context, in the company's submission, mattered and required arbitral attention.

Elaborating on this point, CPKC observed that the parties had not in many months of collective bargaining agreed to a single item. There were no signed off items. Meanwhile, the union was asserting that overlap – alignment as the union referred to it – on individual items as reflected in passes represented agreement (and in some cases near agreement, whatever that was). These propositions, the company argued, were completely fanciful and both legally and factually offside.

When these parties want to sign off on an item, CPKC observed, they know exactly how to do so, and in this round, for whatever reason, nothing was agreed upon. That meant the job of the interest arbitrator was to replicate free collective bargaining, starting with what this company had voluntarily agreed to with its other unions – an established wage pattern of 3% a year – and what was awarded with its CN comparator, also 3% a year.

Insofar as other economic increases over and above the general wage increase were concerned, the record, which the company reviewed, was dispositive. There were economic improvements

bargained with other CPKC unions beyond the general wage increase but they were bargained in return for operational efficiencies. CPKC reviewed the various collective agreements demonstrating this to be true. The fact that other unions did not broadcast their having agreed with CPKC to operational efficiencies in their reporting to their membership – what was exchanged for various economic improvements – did not make them any less real. CPKC walked through the various give and takes. The TCRC could say what it wanted but is claim that there were no trade-offs was contrary to the evidence in the ratified collective agreements, which plainly established otherwise. There was no basis in the absence of any reciprocity, the company argued, to award the union's request for catch-up to CN, given the prevailing pattern, or increases to the shift differential, or economic or other improvements to any other provision of the collective agreement. This conclusion was made even more manifest by the union's abject refusal to seriously consider any of the company's proposals, all of which were firmly grounded in demonstrated need such as, for instance, changes to paid leave enactments under the *Canada Labour Code* – notably personal and medical leave entitlements – and other changes required by the implementation of Transport Canada's *DRPR*. Sick leave and absences more generally had skyrocketed. At a very bare minimum, CPKC argued, it's Held Away proposal should be awarded. The Held Away provision was negotiated before the DRPR came into effect, leading to diminished crew availability and non-productive growing wage expenses. There was, in the company's estimation, ample demonstrated need for its proposal.

The bottom line, from CPKC's perspective, was that the *Canada Labour Code* and *DRPR* changes, overlaid on already restrictive collective agreement work rules, made a challenging staffing situation – as noted, absences were rapidly increasing among other problems identified –

even more inefficient and expensive, and called out for the award of its ameliorative proposals (which were also, in its view, to the overall benefit of the TCRC and its members, providing enhanced compensation and demonstrably better work-life balance). The company urged that none of the union's breakthrough proposals be awarded. One of them, for example, the reset at an away from home terminal, was the subject matter of an arbitration proceeding in several months, and guidelines were not determinative of anything. If Transport Canada determined that the company was not compliant with a governing regulation, it would follow any issued direction, but significantly there was no such finding, and no such direction. Another union proposal, payment of pension arrears, was a matter appropriately within management's discretion. In its brief, and at the hearing, CPKC referred to similar instances of union demands which, when carefully examined, were for one reason or another, inappropriate and/or counterproductive.

Discussion

Most fundamentally, these parties disagree about what operational changes should be made to existing collective agreement provisions. Both parties presented proposals that they argued were justified by application of the normative interest arbitration criteria. Both parties also described the proposals advanced by the other as breakthroughs that would never be accepted in free collective bargaining. This is what led to the bargaining impasse, followed by the labour dispute (and the inability to bridge the divide in the mediation phase of this proceeding).

As noted, the parties were unable to agree on a single proposal notwithstanding many bargaining sessions and the assistance of experienced FMCS mediators. To be sure, when various passes are deconstructed and compared, there appears to be agreement in the form of overlap on individual items (and the parties did come close to agreement on others). That is the beginning, not the end, of the matter as those passes were complete packages; they were comprehensive offers to resolve the dispute. It would not be appropriate to segregate these "agreed" and "near agreed" items and characterize them as agreed when they were, by design, only agreed within the context of a fully baked take it or leave it all in settlement proposal. Put another way, the fact that passes between the parties had elements that aligned does not convert those aligned items, absent agreement of both parties – into agreements. The only thing demonstrating agreement in collective bargaining is a sign off, some other form of memorialization, or a clear unambiguous representation. Indeed, both parties acknowledged at the outset of the mediation/arbitration that nothing was agreed. This is certainly unusual in a mature collective bargaining relationship, but not unheard of. What that means, however, is that attention must now turn to how best to replicate free collective bargaining.

In pursuit of that objective, settlements between CPKC and its other unions have been carefully reviewed, as have sectoral settlements, most notably the recent arbitration award between *CN & TCRC* (unreported dated April 7, 2025, https://canlii.ca/t/kbf9x). CN is the obvious and agreed comparator (but there are obviously differences – the CPKC pension plan is superior, for example – and total compensation is a factor to be considered). Nevertheless, replication, absent exceptional circumstances not present here, is the most important of the interest arbitration criteria. In that context, and looking at the internal comparators, and the important external one

(CN), one readily identifies the existence of an established pattern of 3% general wage increases in each year of the collective agreement being settled by this award. There is no reason to depart from this firmly established normative, pervasive, uncontradicted pattern. Likewise, as is found in the CN award, and supported by application of the replication criterion, these general wage increases should be applied to premium payments except shift differentials, maintenance of earnings and expenses.

Mention must be made that the free collective bargaining settlements reached with other CPKC unions reflect some bargaining trade-offs. To be sure, the extent and value of these trade-offs was hotly contested, but their existence is undeniable. This award has sought to achieve a similar balance.

The award replicates the established wage pattern and provides, as noted above and below, for the application of the general wage increases to certain premium payments. The award replicates shift differential improvements agreed to with other CPKC unions and also provides, again based on replication, for normative increases to benefits but, importantly, these are awarded together with CPKC's proposal for several benefit eligibility modifications.

There is demonstrated need for the pension repayment provision that is being awarded. The same conclusion is reached with respect to resets. In accordance with Department of Transport recommendations set out in the Application Document (and as is the case at CN, and as used to be the case, until very recently, at CPKC), resets should be applied at home. Data provided by

CPKC at the May 10, 2025, hearing indicates that in the first four months of 2025 there were only 49 away from home resets. Nevertheless, this awarded change – extremely important to the union and its members – is sector normative – it exists at CN and used to be followed at CPKC – and it is compliant with recommended Department of Transport best practices. The NRA agreement, as discussed at the hearing, is remitted to the parties, and I remain seized. There are other gives and takes – which would be found in free collective bargaining – which this award has attempted to replicate.

For whatever this observation is worth, the single thing the parties agreed upon in both the mediation and arbitration phase of the proceedings was their characterization of the other party's proposals as breakthroughs. It is well accepted that significant changes to existing and mature collective agreements are best arrived at – absent true demonstrated need demanding arbitral intervention – by the parties in free collective bargaining, which, of course, presupposes some kind of reciprocity best illustrated by recognition and then accommodation of opposing interests (as appropriate). To the extent possible, this award has been fashioned to achieve this kind of outcome.

Any CPKC or TCRC proposal not specifically addressed in this award is deemed dismissed. The collective agreement settled by this award shall, therefore, consist of the unexpired provisions of the predecessor collective agreement and the terms of this award. Several items have – deliberately – been remitted to the parties to provide them with the opportunity to collaboratively arrive at the necessary collective agreement language to give them effect.

Award

Term

January 1, 2024, to December 31, 2027.

Wages

January 1, 2024: Increase rates by 3%.

January 1, 2025: Increase rates by 3%.

January 1, 2026: Increase rates by 3%.

January 1, 2027: Increase rates by 3%.

Employees who were in service on January 1, 2024, or who were employed subsequent thereto, shall, providing they have not been dismissed from the service, file has been closed or resigned prior to this agreement, be entitled to any amount of increased wages that is due them for time worked subsequent to December 31, 2023. Any employee subsequently reinstated to service with compensation will, upon reinstatement, be entitled to the benefits contained herein.

These percentage general wages increases should, effective date of award, also be applied to all premium payments except shift differentials, maintenance of earnings and expenses.

Shift Differential

Effective the date of award, amend Article 2.7 to read:

2.7 Employees whose shifts commence between 1400-2159 will receive a shift differential of $1.50 per hour and

employees whose shifts commence between 2200-0559 will receive a shift differential of $2.00 per hour.

Time and one-half premium for overtime shall not be calculated with respect to a shift differential. (current CBA language)

Road Switchers included.

Benefits

Dental Annual Maximum

Modify the provision concerning covered expenses as follows:

a) Effective with treatment which commenced on or after January 1, 2025 covered expenses will be defined as the amounts in effect on the day of such treatment, as specified in the relevant provincial Dental Association Fee Guides for the year 2025.

b) Effective with treatment which commenced on or after January 1, 2026 covered expenses will be defined as the amounts in effect on the day of such treatment, as specified in the relevant provincial Dental Association Fee Guides for the year 2026.

c) Effective with treatment which commenced on or after January 1, 2027 covered expenses will be defined as the amounts in effect on the day of such treatment, as specified in the relevant provincial Dental Association Fee Guides for the year 2027.

d) Effective January 1, 2025, increase the annual maximum to $2,250.

e) Effective January 1, 2026, increase the annual maximum from $2,250 to $2,300.

f) Effective January 1, 2027, increase the annual maximum from $2,300 to $2,350.

Orthodontics

Effective January 1, 2025, increase the lifetime maximum for orthodontic coverage to $1,750.

Disability Benefits

a) Effective January 1, 2025, the maximum benefit will be increased to $900.

b) Effective January 1, 2026, the maximum benefit will be increased to $910

c) Effective January 1, 2027, the maximum benefit will be increased to $920

Life Insurance

a) Effective January 1, 2025, the group life insurance coverage will be increased to $59,000 for employees who have service with the Company on or subsequent to that date.

b) Effective January 1, 2026, the group life insurance coverage will be increased from $59,000 to $60,000 for employees who have service with the Company on or subsequent to that date.

c) Effective January 1, 2027, the group life insurance coverage will be increased from $60,000 to $61,000 for employees who have service with the Company on or subsequent to that date.

Optional spousal life insurance increased from $150,000 to a maximum of $250,000 effective sixty days following issue of award.

Vision Coverage

Effective January 1, 2025:

a) Increase to vision coverage from $325 to $425 for all eligible expenses, combined in any 12-month period for a person under the age of 18, or in any 24 month period for any other person.

b) Provide separate coverage for 1 eye exam in any 12-month period for a person under the age of 18, or in any 24-month period for any other person, subject to the Reasonable & Customary maximum.

Dependent (Child), Dental (Frequency of Bite Wings), Termination of WIB at age 65 and Subrogation Agreement

Company proposals awarded (para 271 company brief). Subrogation language remitted to the parties. I remain seized.

Bereavement Leave

Incorporate *Canada Labour Code* provisions into collective agreement.

Current scheduling practices to continue.

Articles 57.01 (LE) and 80 (CTY)

Call windows at AFHT decreased from 2 hours to 90 minutes.

Locomotive Engineer Conductor Only Payment – Initial Terminal

TCRC proposal awarded.

Resets

Resets to be applied at the home terminal. Collective agreement language remitted to the parties.

Pension Arrears

Add LOU:

Employees who have arrears that are $10,000 or less will be required to repay within one (1) year. Employees who have arrears that are more than $10,000 will be required to repay the monies within two (2) years.

In exceptional circumstances, the General Chairperson will contact the Director of Pension to review on a case-by-case basis.

In any case, the Union and the Employee may utilize the grievance and arbitration process under the collective agreement to challenge any decision made by the Company in relation to this LOU.

KVR and KLR

Amend grievance procedure to align with core collective agreement.

January 2nd General Holiday replaced with National Day of Truth and Reconciliation.

KVR

Article 5.4

Company proposal granted.

Article 21.1

Company proposal granted.

Conclusion

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

DATED at Toronto this 30th day of May 2025.

"William Kaplan"

William Kaplan, Sole Arbitrator