

IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN:

CPKC

and

TCRC (RTC)

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

Jason Bailey
General Chairman – RCTC

Veronica Linkletter
Senior Vice General Chairman – RCTC

Alex Dahbour
Division President – TCRC Division 954

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) Rail Traffic Controllers (RTC) 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 Parties

CPKC 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-RTC represents approximately 90 Rail Traffic Controllers (RTC) along with 18 trainees. The RTC’s are responsible for the orderly and efficient movement of trains across North America. They also ensure the safety of employees who staff the trains, and the

communities that the trains traverse. All RTCs are based in Calgary at the Operations Centre which operates 24-7, 365 days a year. Obviously, these highly skilled RTCs occupy an important and critical position; they make a vital – indeed indispensable – contribution to CPKC’s overall success.

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. That collective agreement, the TCRC submitted, would have reflected and addressed the chronic staffing shortages at the Operations Centre and, furthermore, been responsive to the union’s outstanding and well documented quality of life concerns including workload management.

In the TCRC's submission, 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 justified and should be awarded. Notable for its absence was any suggestion of an inability to pay; in fact, the opposite was true. The company was doing extremely well – as was demonstrated by revenue, income, earnings per share and operating ratio metrics, a most positive fiscal outlook also reflected in the Canadian economy considered more generally. Even with the threat of American tariffs, CPKC was on record anticipating continuing growth, and profitability. These and other factors such as demonstrated need for its proposals – as set out in the union's brief – and the established and undisputed recruitment and retention challenges, supported the union's wage and benefit demands (independent of but also required to redress the 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. Inflation, which was persistent, and embedded, also needed to be addressed, and the way to do that was in significant compensation increases.

For all these reasons, and others, the union sought general wage increases of 3.5% in each year of a four-year term and various benefit improvements (including to weekly indemnity) and increases to shift differentials. The union's priority non-monetary proposals included introduction of a muscular and responsive workload management tool, a provision allowing a small and limited number of employees to redeem banked overtime (making the proposal operationally feasible, and circumscribing the employer's discretion, which was invariably

exercised to deny individual requests), together with restrictions, including penalties, to ensure that desk reassignments – the work management changes – were reasonable and safe (together with all the other proposals set out in its written submissions). The TCRC 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. There was no evidence of any of that, and what evidence purportedly in support of this completely unproven claim was too little and brought forward too late. The union asked that these claims be dismissed. However, there were many items that were agreed, or nearly agreed, in collective bargaining, and they should, the TCRC submitted, be awarded.

CPKC Submissions

In the company's submission, all the 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 and the granting of those put forward by the company. However, in this case, context also mattered. That important context was an interest arbitration process where the parties had not in many months of collective bargaining agreed on a single item. There were no signed off items. Meanwhile, the union was asserting that overlap 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 the 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 straightforward. 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 – exactly 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 its 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.

Discussion

As earlier 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 came 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 external comparator. 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.

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. It provides for a shift differential improvement along with normative increases to benefits balanced in part with company-requested adjustments. An improvement sought by the employer to facilitate workplace stability is awarded, as is a workload management tool requested by the union, along with a guarantee provision (remitted to the parties) on Banked/ILO Time (made necessary by a significant decline in the number of leave hours granted year over year and sectoral replication more generally). While not as significant an issue with RTCs as with RTEs, there is demonstrated need for the pension arrears repayment provision that is being awarded.

For whatever this observation is worth, both parties sought significant changes to existing collective agreement provisions, and introduction of new ones. The single thing the parties agreed upon 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 appropriate freely bargained gives and takes.

The union noted the following in its report to its members after the mediation failed and the case was scheduled for a hearing: “Although we do not know yet what the award will entail, we can expect it to be similar to the recent CN award and to follow a pattern of awards previously made via arbitration. Interest Arbitration traditionally does not result in ‘breakthroughs’, meaning no major wins for either the company or the union.” I completely agree with this assessment.

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.

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)

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.

Improvements to Benefit Plan

- a) Effective date of award, increase maximum lifetime benefit from \$75,000 to \$90,000.
- b) Effective January 1, 2025, increase annual paramedical coverage to \$650 (capped 80%).
- c) Provide for Infertility drug coverage at 50% to a maximum of \$3,000 per lifetime and Erectile Dysfunction drug coverage at 50% to a maximum \$1,000 per calendar year as prescribed.

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.

Workload Management

Add LOU:

This letter dated April 8, 2025 shall form part of the Collective Agreement.

The Company recognizes that a balanced workload for Rail Traffic Controllers is critical for employees and to the operation. We continue to regularly monitor and assess RTC desk workload to ensure that employees can effectively and efficiently perform their duties on a day-to-day basis. Where warranted, RTC desks and workloads are either adjusted or desk territories split depending on the circumstances.

Based on our discussions and the Union request to have employees actively engaged in the process, we agreed to expand the scope of our current RTC desk workload assessment process as follows:

1. The parties will establish an RTC Workload Review Committee (the Review Committee) consisting of working RTCs and Directors (the union will nominate its members; the company will nominate its members).
2. Within 60 days of establishment, the Review Committee will identify:
 - a. Duties and tasks a RTC may be required to perform during any tour of duty,
 - b. workload assessment parameters,
 - c. protocol for desk review prioritization,
 - d. desired timelines, and
 - e. recommendations, if any, with respect to lunch and utility positions.

It is understood and agreed that desk prioritization for assessment will be key to the success of this Committee. (Note: The Review Committee will determine which, if any, desks may need ongoing monitoring due to capital projects.)

The Review Committee may utilize other measurement tools (i.e. technological advancements) that become available in the future.

3. The Review Committee will meet monthly – unless otherwise mutually agreed – and it will forward its recommendations to the Steering Committee for the first six (6) months and quarterly thereafter.

4. The Steering Committee, consisting of the Chief Labour Officer, Vice President TCRC and a senior operations officer, or their designates, will review the recommendations of the Review Committee and, if appropriate, implement on a pilot basis for 90 days during which any operations or employee impact will be assessed and brought forward to the Review Committee for discussion.
5. In the event the Review Committee is unable to agree, the recommendations may be escalated to the Steering Committee for final determination. It is agreed and understood, that a response with reasons will be provided within sixty days to the Review Committee.
6. This Workload Assessment Process is not a temporary arrangement, but an ongoing commitment by all parties reflecting shared agreement on the importance of a balanced workload.

The parties recognize and agree there may be unplanned situations that require an immediate assessment by management to determine whether a RTC desk requires reconfiguration or desk split. In such cases, the reconfiguration or desk split will be made and the designated union representative will be informed of the Company's findings as soon as practical. In the event that the parties are unable to resolve outstanding disputes, either party may file a grievance and refer it to arbitration.

Banked/ILO Time

Guarantee of 1 (one) day per RTC awarded. Specific terms and conditions of this guarantee remitted to the parties. I remain seized.

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.

Train and Hold

Amend Article 16:

Employees may not bid off of a position until twenty-five working shifts have been completed or by mutual agreement through the Company.

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