AH910

IN THE MATTER OF AN ARBITRATION UNDER THE *Canada Labour Code, RSC 1985, c L-2.*

BETWEEN:

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, SYSTEM COUNCIL NO. 11

(IBEW)

-and-

CANADIAN NATIONAL RAILWAY COMPANY

(CN)

GRIEVANCE RE MAINTAINER ROVER POSITION IN SELF DIRECTED UNIT #3BA

Arbitrator:	Graham J. Clarke
Date:	July 29, 2026

Appearances:

IBEW:

K. Stuebing:	Legal Counsel
J. Sommer:	Sr. General Chairman
G. Badesha:	General Chairman
B. McCue:	Regional Chairman CN GLD
P. Mueller:	Chairman of the Board of Trustees
S. Martin:	International Representative

CN:

F. Daignault:	Director Arbitration & Corporate LR, Montreal
A. Hernandez Gutierrez:	Labour Relations Associate, Edmonton
J-B. Gilbert:	Sr Manager S&C Maintenance, Montreal
S. Sayah:	Sr HR Compliance Specialist, Montreal

Arbitration held in Montreal on June 23, 2026.

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BACKGROUND

1. The parties dispute whether Appendix T of the collective agreement (CBA) obliged CN to post a Maintainer Rover position for the Self Directed Unit (SDU) #3BA in Brockville. CN had dismissed the SDU's incumbent rover. CN ultimately issued a bulletin for a Mechanic S&C position.

2. The IBEW argued that Appendix T required CN to replace the departed rover and return the SDU to its previous 7-person complement. The IBEW further submitted that CN had failed to respect Appendix T's consultation process prior to posting the mechanic position. It further argued that the elimination of the SDU's rover position violated the parties' Employment Security and Income Maintenance Plan[1] (ESIMP).

3. CN maintained that Appendix T established a concept which provided an SDU with some autonomy over its work rather than mandatory staffing levels. Performance remained a criterion CN could consider when deciding whether to fill a vacancy. CN further argued that hiring an employee after another had left fell outside the scope of the ESIMP.

4. For the following reasons, the arbitrator finds that Appendix T established a concept, many of the details of which remained undetermined. As a result, CN retained its discretion to decide whether to bulletin a vacancy. Any duty to consult arose solely for a scenario where CN intended to abolish the SDU rather than change its staffing. Finally, the hiring of a mechanic did not constitute the type of change to which the ESIMP applied.

CHRONOLOGY

5. This chronology provides context for this award.

[1] IBEW documents, tab 28, PDF page 280/736.

6. **March 20, 2017**: The parties signed and renewed Appendix T (Part 2)[2]. Key provisions included the following language:

> The concept of the SDU was based on a Unit consisting of four Maintainers and a Maintainer Rover. It is realized that in some areas of the country, geographical considerations dictate variations where appropriate adjustments have to be made. It is also understood that the Agreement is contingent on performance and budget criteria being met.
>
> …
>
> **Maintenance Territory:**
>
> > A territory staffed by a combination of 2 or 3 S&C Maintainers who will be responsible for the day to day activities within that territory.
>
> **Maintenance Unit:**
>
> > May be comprised of 1 or 2 Maintenance Territory (s)
>
> **Maintainer Rover:**
>
> > S&C Maintainer who will assist other S&C Maintainers within the Unit. Assignment may include (but are not limited to) tasks which require 2 employees, relief (including vacation relief) support to EFO operations. The Maintainer Rover will be considered a standby position and will be entitled standby pay pursuant to Article 4 of the collective agreement and can be included in the Unit's call arrangements as scheduled by the Unit. The Maintainer Rover would not be required to be on call for another Unit unless the issue is discussed with the SDU and an effort is made to reach a mutual agreement.
> >
> > It is permissible that the Rover's duties can be transferred between employees within the Unit, this with the agreement of the SDU and consultation of the Supervisor.
>
> **Self Directed Unit:**
>
> > Under certain guidelines and parameters, the S&C Maintainers (including the Maintainer Rover) working within a Maintenance Unit who are accountable and responsible for the work to be performed on the Maintenance Unit.
>
> …
>
> **General Principles**

[2] IBEW documents, tab 32 ; PDF page 678/736.

1. Both parties will meet at minimum semi-annually to review and monitor the impact of the agreement on the employees and the operation. Additionally, the application of this agreement will be closely monitored by the System General Chairman and Labour Relations with the objective of resolving issues prior to becoming formal grievances.

2. As far as practical, the Company will keep SDU's fully staffed. If a Unit is understaffed for a period of time, it will be up to the Unit to advise the Supervisor as to how they will cover the vacant position. Such situation may involve penalty payments.

3. It is not the intention of the Agreement that there be any change in the bulletining procedures. That is, if a vacancy occurs, the position where the vacancy occurs will be bulletined. In other words, it is not permissible that the employees within the Unit arrange themselves and the position left goes to bid.

…

5. This agreement supersedes any articles of the collective agreement that might be in conflict with its content. In such cases, the General Chairman and the Labour Relations Manager shall discuss the issue.

6. This agreement does not supersede any articles of the Employment Security and Income Maintenance Agreement.

Coverage and Hours of work

…

2. The Self Directed Unit (SDU) will be responsible and accountable for:

a) 24 hour per day / 7 days per week / 365 days a year protection of the Maintenance Unit. It is understood that during extreme severe weather the SDU must adopt a plan for additional coverage within the SDU if requested by the Supervisor.
b) Standby coverage.
c) Deployment of the Maintainer Rover
d) Vacation Relief.
e) Planning of support activities.
f) Ensuring arrangements are in compliance with regulatory requirements.

NOTE 1: Should members of the SDU be unable to resolve an issue that they have control over will be referred to the S&C Supervisor for final resolution.

NOTE 2: Where practicable and as arranged with the S&C Supervisor, more than one employee, may be permitted to take vacation. These arrangements must meet the requirement of

Operations, testing and budget to the extent that there will not be cost additional to present controllable expenditures. SDUs will determine their vacation schedule between December 15th of the previous year and January 31st, and must submit the schedule to their supervisor by February 1st. SDU's that do not submit their vacation schedule prior to February 1st shall be required to take their vacation at a time to be prescribed by the Company.

…

Penalty Payments

1. This will confirm that when penalty payments apply, and an individual is required to cover an additional territory within his SDU, during the week and on his normal rest day, the Company will compensate that individual an additional 20 hours in standby pay over a two-week period, unless the Company determines that coverage is not required. This does not absolve the Company from abiding by the provisions of Article 7.6.

2. The above agreement is predicated on the guarantee that the SDU in question will ensure coverage of this vacancy through agreement among the SDU members. In exceptional circumstances, the SDU may have to arrange coverage outside of the SDU. It is understood that the Company will not incur any additional cost or response time delays due to this coverage.

…

General Comments

The Company will establish performance criteria for SDU's to ascertain that the Units perform to the expected level of productivity and availability to meet operational requirements. The criteria will be updated annually and monitored throughout the course of the year. These efficiency criteria may include, but not limited to the following:…

…

It is further understood that should any Self Directed Unit not meet the established performance criteria, the Union (regional representative) will be advised of the situation and the parties will review the issues within 7 calendar days and after such review, if the required improvements are not met by said SDU, then the Company will have the right to revert this SDU to a 5/2 work cycle until such time that the Company is satisfied that it can meet the established performance criteria.

Once reverted to a 5/2 cycle, the General Chairman will be advised. If after 30 calendar days, the required improvements are not met by said SDU, the SDU will be dissolved and those employees will no longer be governed by this Appendix. However, the General Chairman may approach the Company to review restoring the SDU after 6 months have elapsed, if circumstances have changed.

…

Both parties will ensure the intent and spirit of the Agreement are being properly applied. Engineering management will monitor performance measures. Both parties will communicate issues to the other, as required, with the objective of resolving them within the principles of the Agreement and these guidelines. In addition, and as outlined in the Agreement, meetings will be held at least four times per year to discuss and resolve SDU issues.

…

It has been agreed to extend the SDU agreement for the duration of the new contract ending December 31, 2021. During this period, the parties agree to suspend the annual cancellation clause, which read “either party may, upon written notification to the other party, advise (between September 1st and 30th of any year) of its intention to cancel the agreement on January 1st of the following year.

(Bold in original)

7. **January 8, 2025**: CN dismissed the Brockville SDU’s rover for cause[3].

8. **January 17, 2025**: CN bulletined[4] the dismissed rover’s job as a Maintainer S&C temporary position given the IBEW’s grievance over the incumbent’s dismissal.

9. **June 20, 2025**: CN posted[5] Bulletin #3R20250620 for the permanent position of Mechanic S&C, headquartered in Brockville.

10. **June 23, 2025**: The IBEW emailed[6] CN to dispute what it considered an abolishment of the rover position in Brockville:

I would like to dispute the recent abolishment of the Brockville Rover position, which - in the Union’s opinion - was incorrectly abolished. Additionally, the new “maintenance mechanic” position has not been bulletined correctly. Though the Union acknowledges the Company’s right to abolition a position via attrition, in

[3] CN Brief, paragraphs 9 and 10.
[4] IBEW documents, Tab 17, PDF page 158/736.
[5] CN documents, Tab 2, PDF page 21/168; IBEW documents, Tab 18; PDF page 178/736.
[6] IBEW documents, Tab 19, PDF page 183/736.

the case of abolishing an on-call Rover position from an active SDU cannot be done unilaterally.

That SDU was a seven person SDU, with the on-call Rover being an integral part of the SDU as it was implemented (many years ago) to replace the Leader position for that SDU. This reduces the SDU's size and removes an on-call employee from the SDU - which has negative impact on scheduling, Annual Vacation coverage, testing and maintenance schedules, supporting EFO work, and on-call schedules. Additionally, these territories have remain unchanged for many, many years yet have seen a considerable increase in assets and workload. This change is in contravention of Appendix T as well as the ESIMA.

Under the ESIMA, Article 8.1 (a), the Company is to give as much advanced notice to the Union (more on that below) and with no less than 120 days' notice to the System General Chairman. After providing the notice to the Union, a Labour Adjustment Committee needs to be formed to address the proposed technological, operational, and organizational changes. Had a 120 days' notice been provided, we could have added this change to the SDU meeting scheduled for August 21st, 2025, to address the Company's and the Union's concerns.

There have been many satisfactory SDU re-alignments and job abolishments/modifications made in the past, with Union involvement, that avoided any potential conflict such as a grievance. For example, when Jim McGill's maintainer position was abolished at the west end of the Kingston sub, and a new position added to the Belleville area, the Union was advised of the Company's intention and we worked together to ensure the adjusted SDUs and territories were satisfactory. Later, when the Maintenance Mechanic position was added to the Kingston sub in the Belleville area, that was a brand new position created to operate on the subdivisions of Kingston and York, and not part of any SDU nor was it part of a TO&O.

Regarding the incorrect bulletin, the position is bulletined as Dennis Stein's vice, yet he did not hold a maintenance mechanic position. He was the on-call Rover. The bulletin also states that the mechanic is assigned to SDU 3BA, yet states in the Job Description that the mechanic works under the direction of the maintenance supervisors. If a position is assigned to a SDU by bulletin, then it would be a member of the SDU and thus work under the direction of the SDU and not the supervisor. (It's Self Directed Unit, not Supervisor Directed Unit.) If the position is part of the SDU, then it should be subject to on-call and a part of the SDU's call rotation. No SDU that I am aware of has members not subject to call.

On a personal note, regarding notice, I must say that I strongly believe the Company has acted in a surreptitious manner. Early last week, Supervisor Josh Dickson advised the SDU members that the Brockville rover position was going to be abolished. I reached out to S&C Manager Jim Ross on Tuesday asking if this was the Company's intention. I was told via email that this was nothing more than a ”rumour” and “speculation.” I was told that he would speak with Dickson. I subsequently advised the members of what Jim had communicated to me.

Once the grievance withdrawal concerning Stein was completed (Thursday), out of professional courtesy (given how much the Company has expressed to the Union it’s challenges with ongoing temporary positions needing to be bulletined permanent), I advise JB directly that the Brockville Rover position could be posted permanent on Friday’s bulletin. JB acknowledged this but made no mention of abolishing the position. I then saw the abolishment when the bulletin went live. I am not sure why the Company would keep this from the Union given we’d obviously see it on the bulletin on Friday. I have been assured by Jim and JB that this was a last minute decision that came from “above.”

However, if that were the case, then why did Josh know about it on Monday? Clearly there were plans by the Company to abolish the position well before Friday. This kind of behaviour greatly undermines the Union’s attempt to bolster and improve the Union/Company relationship since the ratification of the new MoA. The Union has put substantial effort into finding common ground with the Company so we can spend less time fighting each other and more time focused on railroading and improving both Company operations and member/employee satisfaction. I now struggle with how we can have a cooperative relationship when the Company pulls the rug out from under the Union like this. I have expressed this to both Jim and JB directly.

The immediate ask is that this position be cancelled on the upcoming award list. We also ask that either the position be bulletined permanent in its original form (Brockville On-Call Rover), or; the Company leaves the temporary position undisturbed and issue a 120 days’ notice to abolish the position and we try to reach a mutually satisfactory resolve at the upcoming SDU meeting in August. If the Company cannot agree to one of these, then the Union will be forced to file a grievance on the matter citing violations of the ESIMA Article 8.1, Appendix T, and any other Articles and/or Agreements that the Union feels were violated in this unilateral operational and organizational change to the 3BA SDU.

11. **June 27, 2025**: CN return emailed[7] the IBEW with the subject heading “Follow-Up on Abolishment of Rover Position – Brockville SDU”:

Further to our recent call regarding the notice that the Company will be abolishing the rover position by attrition in the Brockville SDU, we want to confirm that your concerns were heard and taken seriously. Following our discussion, the Company conducted a detailed analysis of the Brockville SDU’s workload data, which provided key insights supporting the decision to eliminate the rover position previously held by Mr. Dennis Stein.

[7] IBEW documents, tab 20, PDF page 186/736.

[Chart of workload data omitted]

Key Observations

Uneven Workload Distribution:

There is a notable disparity in the volume of work among employees:

Patrick Haggerty completed 2,158 GI tests, while Russell Drew completed only 1,385.

Jack Reynolds responded to 124 calls—nearly four times more than Roger Currie, who responded to 33.

Limited Use of Rover Role:

Mr. Stein was not included in the on-call rotation, and his role was limited to vacation coverage. This function will be absorbed by the **new mechanic position**, which is designed to provide greater flexibility and efficiency by covering both vacation relief and additional operational tasks.

Compliance with Collective Agreement:

Our review confirmed that no employee was required to respond to more calls than permitted under the collective agreement.

Based on this analysis, the Company believes that a restructuring of duties within the existing team, along with the introduction of the mechanic role, will ensure a more balanced workload and maintain operational effectiveness. We are confident that a six-person SDU, in its revised format, is sufficient to meet the operational needs of the Brockville territory. We remain available to discuss this matter further next week and welcome any additional feedback you may have.

(Bold in original)

12. **July 4, 2025**: CN awarded the Mechanic position.

13. **July 16, 2025**: The IBEW grieved[8] CN's decision to hire a permanent mechanic S&C rather than a rover who would have returned the SDU to its original 7-person complement. It also alleged the change violated the parties' ESIMP.

14. **September 24, 2025**: The IBEW moved its grievance to step 2[9] and noted that CN had never responded to its original grievance.

[8] IBEW documents, tab 21, PDF page 189/736.
[9] IBEW documents, tab 22, PDF page 200/736.

15. **November 10, 2025**: The IBEW wrote[10] CN to advise it would proceed to arbitration.

16. **November 18, 2025**: CN provided its step 2 response[11].

17. **January 12, 2026**: The parties retained the arbitrator for a June 23, 2026 arbitration session to hear this grievance and others.

INTERPRETATION PRINCIPLES

18. The parties pleaded this interpretation case and other grievances on June 23, 2026[12]. The railway model of arbitration sometimes has challenges with complicated interpretation cases since, unlike in disciplinary disputes, the parties do not create a transcript. Parties also rarely call *viva voce* evidence.

19. The arbitrator respects the parties' procedural choice and will discern the facts as best possible from the Record. The arbitrator will then apply the well-known interpretation principles to those facts.

20. In AH805[13], the arbitrator reviewed the applicable principles of interpretation (footnotes omitted):

> 10. In AH801, the arbitrator summarized various principles of interpretation when attempting to interpret an amended and contradictory collective agreement provision…:
>
> > 21. An arbitrator must interpret the words the parties used in their CA. It does not matter what a party might have intended if the words to which they agree mean something else. The parties have the ultimate responsibility to ensure the language of their contract reflects their mutual intention.
> >
> > 22. In CROA 4631, the arbitrator noted:

[10] IBEW documents, tab 23, PDF page 211/736.
[11] CN documents, tab 5, PDF page 54/168.
[12] See AH911 - *International Brotherhood of Electrical Workers, System Council No. 11 v Canadian National Railway Company*, 2026 CanLII 73002
[13] *Teamsters Canada Rail Conference v Canadian Pacific Railway Company*, 2022 CanLII 121426

> 13. A rights arbitrator cannot amend the collective agreement. Article 14 of the parties' Memorandum of Agreement Establishing the CROA&DR makes this explicit:
>
>> The decision of the arbitrator shall not in any case add to, subtract from, modify, rescind or disregard any provision of the applicable collective agreement.
>
> 14. For interpretation cases, Arbitrator Moreau described the importance of evidence and the plain and ordinary meaning of negotiated provisions in CROA&DR 3601:
>
>> Arbitrators follow several presumptive rules of interpretation when construing a collective agreement. One of the lead rules is that the provisions in a collective agreement must be read according to their plain and ordinary meaning. That rule will only be set aside when it has been demonstrated, with clear and reliable evidence, that the parties have agreed to an interpretation that is different from its ordinary meaning.
>
> 15. In CROA&DR 4606, this Office described how past practice and estoppel can impact collective agreement interpretations.

23. In a non-railway case, Arbitrator Surdykowski provided a helpful summary of labour arbitrators' obligations when interpreting the parties' negotiated language:

> 23. A grievance arbitrator cannot rewrite the parties' agreement. In the absence of an ambiguity established or resolved by extrinsic evidence, collective agreement wording trumps all considerations other than legislation, and a grievance arbitrator must interpret the collective agreement as written. An arbitrator cannot amend or imply terms into a collective agreement because he considers it fair or appropriate to do so, or because of his view of what the parties must have or could not have intended. Although has been written about collective agreement purpose, fairness, internal anomalies, cost or administrative difficulty, or the effect on the parties or bargaining unit employees, such considerations can only come into play when the grievance arbitrator must choose between equally plausible interpretations of the collective agreement language in issue – a situation which rarely presents. The grievance arbitrator is tasked with determining what the collective agreement provides or requires, not what he thinks it should provide or require, regardless of the effect on either party or on bargaining unit employees. The employer, the union, and bargaining unit employees are entitled to no more or less than the benefit of the bargain described by the words contained in the

> collective agreement. Clear collective agreement wording prevails over all considerations other than legislation. It is up to a party that is dissatisfied with the consequences of the collective agreement bargain as determined by a grievance arbitrator to seek a collective bargaining solution. It is no part of a grievance arbitrator's job to save the parties or either of them from the consequences of the agreement as written by them.

> 11. In short, the arbitrator will consider this non-exhaustive list of principles when interpreting the parties' CA:
>
> 1. An arbitrator interprets not what the parties may have subjectively intended but instead the plain and ordinary meaning of the words they negotiated into their collective agreement;
> 2. Exceptionally, and provided certain legal preconditions are met, an ambiguity, a past practice or an estoppel may impact the collective agreement's interpretation;
> 3. A rights arbitrator has no authority to rewrite or otherwise amend the collective agreement;
> 4. Parties are entitled only to the benefit of their bargain; and
> 5. A rights arbitrator does not determine what the parties' appropriate bargain should have been. Changes to the parties' "deal" come solely from collective bargaining.

21. The arbitrator will follow the above principles when interpreting Appendix T.

DOES APPENDIX T OBLIGE CN TO BULLETIN A ROVER POSITION WHEN AN INCUMBENT LEAVES?

22. The arbitrator understands why the parties have different interpretations of their CBA obligations. Appendix T, while not ambiguous, remains vague since it establishes a concept rather than a detailed code governing SDUs. It foresees cooperation as the method to work out the concept's details.

23. On the one hand, Appendix T clearly identifies the SDU concept as including a rover. It contains a definition for the rover position. Appendix T also notes that the SDU will be accountable for, *inter alia*, the "Deployment of the Maintainer Rover". This leads to the question of how can an SDU deploy a non-existent position?

24. But Appendix T also adds conditions to the SDU concept. The concept remains subject to geographical considerations which can dictate "where appropriate adjustments have to be made". Similarly, Appendix T itself is "contingent on performance and budget criteria being met".

25. Appendix T therefore raises the question whether CN must bulletin the SDU's rover position after the incumbent's dismissal, despite its analysis that the former 7-person SDU had been overstaffed?

Parties' positions

IBEW

26. The IBEW maintained that Appendix T obliged CN to post a rover position whenever a vacancy arose:

> 48. The central issue that must be determined in this case is whether the Collective Agreement, specifically Appendix "T", entitles the Company to abolish the Maintainer Rover position in SDU #3BA and post a Mechanic position with entirely different duties and responsibilities. The Union submits that the Company is not entitled to do so. This is based on the clear language of the Collective Agreement, specifically Appendix T (Part 2), which requires the Company to post a Maintainer Rover position in SDU #3BA and not a Mechanic position with entirely different duties and responsibilities.
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> ...
>
> 55. Notwithstanding its denial, the Company has already admitted to abolishing the Maintainer Rover position. Mr. Gilbert confirmed that the Company was "abolishing" the Maintainer Rover position, and that the number of members in the SDU would be reduced from seven to six, in his email dated June 27, 2025. Having expressly admitted to such, the Company must not be permitted to take a different position.
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> ...
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> 66. As a result, contrary to the SDU number indicated on the posting, the position was not even a genuine SDU position, much less a Maintainer Rover position. The Company has not only eliminated the Maintainer Rover position from SDU #3BA; it has reduced the staffing of SDU #3BA as well.
>
> 67. The only way by which the Maintainer Rover position is not eliminated is if the Collective Agreement and Appendix T are fully complied with, meaning that the Company's job posting must be revised to ensure compliance. This would necessitate, inter alia, the position being fully relinquished to SDU #3BA (i.e. not subject to local supervision as originally stated), standby pay being applicable, and absences of the position from the SDU entailing penalty payments in accordance with Appendix T.
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> ...
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> 69. First, the recitals to Appendix T states that the concept of the SDU is based on a unit consisting of four Maintainers and a Maintainer Rover. The Definition

section goes on to state that a Maintainer Rover is to have special duties and responsibilities that set them apart from a Maintainer simpliciter. Indeed, the definition of Maintainer Rover specifically permits "the Rover's duties" to be transferred between employees within the Unit – meaning that there is a category of duties performed by the Rover which is separate and apart from the duties of other Maintainers. Moreover, the parties specifically agreed to the option of transferring, but not eliminating or not performing, Rover duties. Furthermore, under Coverage and Hours of Work, Appendix T requires that the SDU is responsible for accountable for deployment of the Maintainer Rover. In other words, being down one Maintainer Rover is not merely a numerical understaffing issue; the issue is also that the duties and responsibilities specifically assigned to the Maintainer Rover would not be performed. This is the first indication that a Maintainer Rover position cannot simply be abolished from the SDU.

...

72. The Union submits that an SDU is not fully staffed if one or more members of the SDU are not at work. Due to the nature of the SDU (in that it is required to provide round-the-clock protection of defined Territories), the absence of such a member necessarily means that there are functions and duties required to be performed that are not being performed. Not having a Maintainer Rover is a clear example of that. The Company is therefore required to ensure that the Maintainer Rover position is staffed, which necessarily means that it must post the vacancy if one arises.

...

80. To summarize, Appendix T/the SDU Agreement expressly states that the Maintainer Rover is a critical part of an SDU, that the Company must keep each SDU fully staffed as much as practicable, and that the Company must post a Maintainer Rover position if a vacancy occurs in that position. These three requirements work together to ensure that each SDU functions as intended by the parties. The Company's position that it can eliminate the Maintainer Rover position and post a different position subject to direction and supervision outside of the SDU is totally contrary to the plain meaning of the words used by the parties.

...

105. To conclude, the language of the SDU Agreement (what is now Appendix T), read in its plain and ordinary meaning, clearly provides for the necessity of the Maintainer Rover position in each SDU, as follows:

a. A Maintainer Rover is included in the concept of the SDU;

b. Duties of a Maintainer Rover must be fulfilled within the SDU;

c. The SDU must be fully staffed and vacancies must be posted;

> d. The Company can only make limited changes to an SDU under specific circumstances, and the permissible changes do not include the elimination of a Maintainer Rover position;
>
> e. The relief provided by the Maintainer Rover position forms the backbone of an SDU's ability to provide relief to other Maintainers within the unit.

27. The IBEW's Reply contested CN's suggestion, *inter alia*, that some SDUs did not have a rover:

> 4. Contrary to the Company's submissions at paras 88 and 92, referring to SDUs that "do not have a rover" misrepresents the nature of this dispute and the reason why the Union grieved in this instance while it did not in other instances. Appendix T specifically contemplates a Rover's duty being shared among the other members of an SDU. It would be entirely proper for an SDU – being self-directed as contemplated – to come to a decision on not having a designated Rover. Violation arose in this case not merely because there is no Rover, but rather because the Company has eliminated a Rover position unilaterally without consultation or consent.
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> ...
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> 7. There is no merit to the Company's assertion that the preamble of Appendix T (Part 2), which states that "geographical considerations dictate variations where appropriate adjustments have to be made" and that "the Agreement is contingent on performance and budget criteria being met", means that the Company has sole and unfettered discretion to make changes to any SDU. First, "appropriate adjustments" may only be made based on "geographical considerations", which do not include performance considerations. Second, the specific ways in which Appendix T is contingent on performance and budget criteria being met is, as explained in the Union's Brief in Chief, clearly set out under the General Comments section, including specific steps that the Company may take where performance is not satisfactory. There is a process that the Company must follow. Nowhere in Appendix T does it state that the Company may unilaterally eliminate a position. To the contrary, the closing paragraphs of Appendix T (Part 2) expressly state that "in the application of the Agreement, the Union and the Company must support its intent and spirit", and that "both parties will communicate issues to the other, as required, with the objective of resolving them within the principles of the Agreement and these guidelines." (Union BOD Tab 15)
>
> 8. The Union does not disagree that flexibility is contemplated in Appendix T. However, contrary to the Company's suggestion, flexibility does not mean that the ability to modify SDUs rests solely with the Company. The Company's submissions are replete with bald assertions that have no basis in the language or intent of Appendix T, including that "SDU staffing levels will be determined

> based on operational needs" (paras 37, 39, 67); that the Company is able to make any adjustments to address "operational efficiency" (para 38); that the Company can make any adjustments unless the Union demonstrates "operational failure" (para 61); and that "as far as practical" means "inherently discretionary" with no enforceable standard (para 67). Significantly, it is based on these baseless assertions that the Company constructs much of its argument.
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> ...
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> 13. Respectfully, the Company's feigned concern as to the workload of the Brockville SDU should be dismissed. The Company happens to state the real reason why it cut the Rover position – at paras 47 and 61, where it is submitted that there was "no indication that the group as a whole was burdened beyond normal workload expectations" and that "no evidence of operational failure has been demonstrated". Ultimately that is the Company's argument – that it is entitled to eliminate the Rover position because it can do so without negative impacts on its operations. The Union makes two submissions in response. First, the Company did not supply any evidence comparing the Brockville SDU with other SDUs until it provided its Brief, which was long after it had made its decision to eliminate the Rover position. The limited, decontextualized and cherry-picked data, supplied by the Company at paras 127-134, is not evidence of anything other than strained attempts at looking for a justification after the fact. With respect to the actual burden of not having a Rover in the Brockville SDU specifically, the Union refers to the negative impact on the Brockville SDU members' workload and work-life balance as discussed in its Brief, including the significance of lacking vacation relief, in addition to additional reply evidence enclosed at Tab 4. Second, the hard work of the Brockville SDU in preventing operational failures from arising despite being down a critical employee must not be used against the SDU to justify failing to fully staff it. Ultimately, nothing in Appendix T entitles the Company to adopt a "try and see" approach of eliminating positions first then observing whether that leads to any operational failures.

<u>CN</u>

28. CN emphasized that Appendix T created a concept, but did not impose mandatory staffing levels which would oblige it keep a 7-person Brockville SDU:

> 30. Appendix T does not contain the mandatory seven-person staffing obligation asserted by the Union.
>
> 31. To the contrary, Appendix T recognizes that the SDU concept was based on a four-Maintainer-and-Rover model, while expressly allowing geographical variations and making the arrangement contingent on performance and budget criteria.
>
> ...

> 35. The language of Appendix T expressly permits flexibility and variation in the structure of an SDU. It establishes a framework or guideline rather than a rigid or prescriptive staffing model.
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> 36. There is no provision in the Collective Agreement requiring that an SDU consist of seven employees.
>
> ...
>
> 52. The Union's requested remedy would require the Arbitrator to read into Appendix T a staffing obligation that the parties did not negotiate and that is not found in the language of the Agreement.
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> ...
>
> 60. The Company's response to the grievance denied that the SDU was understaffed, denied that the SDU lacked capacity to perform its responsibilities, and stated that the concerns raised about Article 10 were not applicable because there had been no Technological, Operational or Organizational change.
>
> 61. The Company rejects that the SDU cannot fulfill its obligations; no evidence of operational failure has been demonstrated.

29. CN further addressed Appendix T's "General Principles" such as bulleting vacancies (principle 3) and keeping SDUs "fully staffed" (principle 2):

> 64. The Company maintains this language applies where a vacancy exists in an unchanged role. This does not eliminate the Company's right to reassess operational needs and determine whether or not it is still required.
>
> 65. Furthermore, there is no language in Appendix T restricting the Company's ability to reassign work outside of the SDU.
>
> 66. Additionally, Appendix T general principle 2, the language of "fully staffed" does not impose a fixed numerical requirement or a requirement to maintain historical positions. The clause provides only that "as far as practical, the Company will keep SDU's fully staffed." Which means 2 to 3 people in an SDU.
>
> ...
>
> 82. The Arbitrator should reject any attempt to add to, subtract from, or modify Agreement 11.1 by imposing a staffing model or remedies that the parties did not negotiate.

30. CN also argued that the Brockville SDU did not require a rover:

> 84. The Union's position rests on the assumption that a Maintainer Rover position must continue to exist and must be re-bulletined upon vacancy. This interpretation is inconsistent with the language of Appendix T.
>
> 85. Appendix T describes the SDU model as a "concept" and expressly allows for departures from that model.
>
> ...
>
> 88. In Eastern Region, there are a total of 38 SDU, of which 19 do not have a rover. This alone must make the Unions grievance fall as the Union has never filed a grievances related to any of the other SDU's not requiring a rover position in the SDU.
>
> ...
>
> 89. The Company's decision was made in light of the workload and operational requirements of the Brockville territory, including the fact that a six-person SDU in its revised format was sufficient to meet those operational needs.
>
> 90. Appendix T expressly contemplates performance criteria and operational requirements, including workload demands, overtime, testing completion, service bulletin completion, response times, trouble calls, and repeat calls as matters relevant to whether an SDU is performing as expected.
>
> 91. The Company was therefore entitled to consider whether the actual work of the territory justified maintaining an additional Maintainer Rover position or whether the work could be supported by the six Maintainers and the posted Mechanic S&C position. (sic)

31. In its Reply, CN emphasized that the arbitrator must give meaning to all the words in Appendix T:

> 2. The Union places great emphasis on the definitions of Appendix T, characterizing the Maintainer Rover as "indispensable" and "mandatory." However, this interpretation requires the Arbitrator to ignore the express qualifying language that immediately follows the conceptual model. Appendix T states that the concept of the SDU "was based on a unit consisting of four Maintainers and a Maintainer Rover" but then qualifies that "geographical considerations dictate variations where appropriate adjustments have to be made" and that the arrangement is "contingent on performance and budget criteria being met." The Union asks this Arbitrator to treat the first half of the sentence as an absolute command while rendering the second half meaningless. This is contrary to the well-established principle of interpretation cited by the Union itself — that all words must be given meaning, and no words can be ignored. The qualifying language expressly preserves the Company's

> operational flexibility to make adjustments, including staffing adjustments, based on the particular circumstances of each SDU.
>
> ...
>
> 4. The factual record demonstrates that this flexibility has been exercised in practice. Of the 38 SDUs in the Eastern Region, 20 do not have a Rover position. This is not a recent anomaly — it reflects the longstanding operational reality that Appendix T does not impose a mandatory Rover requirement. It also proves that the geographical considerations in Appendix T were a factor in the formation of the SDU. Tellingly, the Union has never filed a grievance in respect of any of these other SDUs lacking a Rover, which alone undermines the Union's assertion that the Rover is a contractual necessity. Furthermore, in 2020, a materially similar situation occurred with SDU 3BC70. When one of four S&C Maintainers retired, the Company posted a Mechanic position rather than an S&C Maintainer position. The Union did not grieve that posting. This prior acquiescence is inconsistent with the absolute prohibition the Union now asks this Arbitrator to impose.

32. CN's Reply further argued that Appendix T allows the SDU to decide how to assign responsibilities and did not restrict its right to reorganize work:

> 10. Appendix T assigns responsibilities to the SDU collectively, not exclusively to a Rover position. The obligations of providing 24/7 protection, standby coverage, vacation relief and planning support activities belong to the SDU as a whole. Nothing in Appendix T requires those obligations to be fulfilled through a specific classification or position. The fact that Rover duties existed does not mean that a separate Rover position must always exist. The Agreement expressly allows the transfer of Rover duties within the Unit, confirming that the focus is on the performance of the functions rather than preserving a particular job title indefinitely.
>
> 11. The Union attempts to elevate General Principle 3 into a restriction on management's ability to reorganize work. However, the language cited merely addresses the bulletining process where a vacancy exists in an ongoing position. It ensures that employees within the SDU cannot manipulate vacancies among themselves and deprive bargaining-unit employees of bidding opportunities. It does not address the Company's right to evaluate operational needs and determine whether a position remains necessary. Nothing in the language relied upon by the Union states that the Company is prohibited from redesigning a vacant position, changing classifications, reallocating duties, or creating a different position where operational circumstances warrant.

Decision

33. Despite the IBEW's thorough submissions, the arbitrator cannot conclude that the SDU concept in Appendix T removes CN's discretion whether to bulletin a rover position when an incumbent leaves. Several reasons lead to this conclusion.

34. First, Appendix T[14] establishes the "concept of the SDU". However, Appendix T then adds important qualifying language:

> The concept of the SDU was based on a Unit consisting of four Maintainers and a Maintainer Rover**. It is realized that in some areas of the country, geographical considerations dictate variations where appropriate adjustments have to be made. It is also understood that the Agreement is contingent on performance and budget criteria being met**.
>
> (Emphasis added)

35. The parties' concept of an SDU had four maintainers and a rover. But then they agreed on multiple exceptions such as geographical considerations as well as "performance and budget criteria being met". Indeed, elsewhere in Appendix T, one finds phrases such as "no additional cost to the Company" and "performance criteria". Any interpretation of the parties' "concept" must keep these qualifying factors in mind.

36. Second, Appendix T, while conceptually suggesting an SDU will have 4 maintainers and 1 rover, does not address situations where different numbers exist. For example, the Brockville SDU originally had 7 maintainers, including a rover. The arbitrator's analysis might have differed had Appendix T contained a mandatory ratio of rovers to maintainers, but it does not.

37. Third, CN's staffing decision fits within the contemplated "performance" criterion that underlies Appendix T. CN suggested in its Brief that it learned when investigating the former rover's work performance that the Brockville SDU had been overstaffed. The arbitrator respectfully disagrees with the suggestion that CN can only consider performance if it wants to dissolve the SDU and return to a 5/2 scenario. Appendix T does not restrict performance considerations to that lone scenario.

[14] CN documents, Tab 4, PDF page 27/168; IBEW documents, tab 15, PDF page 118/736. The IBEW documents contain Appendix T Part 1 (March 13, 1998) and Part 2 (March 20, 2017).

38. Fourth, the definition of the "Maintainer Rover" does not suggest that the six remaining maintainers will lose the functions a rover performs. It appears that the SDU can decide to share the rover duties:

> It is permissible that the Rover's duties can be transferred between employees within the Unit, this with the agreement of the SDU and consultation of the Supervisor.

39. While it is always challenging for an arbitrator to interpret provisions like this one without *viva voce* evidence, the IBEW did not demonstrate why the remaining 6 employees in the SDU could not organize themselves in a way to ensure the performance of all necessary duties.

40. The arbitrator might have found the IBEW's argument more compelling if every SDU in Canada had a rover. This would emphasize that an SDU must be accountable and responsible for the "deployment of the Maintainer Rover". But the parties seemed to accept that multiple SDUs in the eastern region had no rover.

41. Fifth, Appendix T acknowledges that the parties will discuss how to make the concept work. Rather than specifying enforceable SDU numbers for each region, Appendix T instead contains general principles to assist with these contemplated discussions.

42. For example, General Principle #2 emphasizes the importance of keeping SDUs fully staffed, but makes this conditional given the words "As far as practical, the Company will keep SDU's fully staffed". The word "practical" would appear to apply to a scenario where CN considers an SDU overstaffed.

43. Similarly, General Principle #3 notes that Appendix T will not change how bulletining works and further references the conditional scenario "if a vacancy occurs":

> 3. It is not the intention of the Agreement that there be any change in the bulletining procedures. That is, if a vacancy occurs, the position where the vacancy occurs will be bulletined. In other words, it is not permissible that the employees within the Unit arrange themselves and the position left goes to bid.

44. The usual rule in labour relations, subject always to explicit CBA language, is that an employer decides whether to fill a vacancy[15]:

> [17] Having carefully reviewed the caselaw filed, I am of the view that the analysis undertaken in Elgin County and Cambridge Memorial Hospital is to be preferred over that in Maplewood, supra, particularly given the structure of this bargaining unit and the language of Article 13.01(a) of this collective agreement. In summary terms, the language of Article 13.01(a) does not define “vacancy”. Whether a vacancy exists is a matter for the Employer to determine pursuant to the exercise of its management rights under Article 2 of the Local Appendix of the collective agreement. Only once a vacancy is determined to exist, is it required to be posted pursuant to Article 13.01(a) of the collective agreement.

45. In this case, CN, based on performance, decided not to post the Brockville rover position. It advised the IBEW it was “abolishing the rover position by attrition”. CN then posted the mechanic position. The IBEW did not demonstrate in what way either Appendix T or the CBA[16] impacted CN’s ability to decide whether a vacancy exists.

46. The arbitrator also notes that Appendix T, unlike the ESIMP[17], does not contain a dispute resolution mechanism to resolve disputes over how to apply the “concept”.

47. Sixth, Appendix T gives the SDU a certain autonomy to organize the work, but when difficulties arise, the parties have given CN, through its supervisor, the power to decide. For example, under the heading “Coverage and Hours of work”, the supervisor has the final say for various issues, the exercise of which will consider, *inter alia*, cost:

> “NOTE 1: Should members of the SDU be unable to resolve an issue that they have control over will be referred to the S&C Supervisor for final resolution”.
>
> “NOTE 2: Where practicable and as arranged with the S&C Supervisor, more than one employee, may be permitted to take vacation. These arrangements must meet the requirement of Operations, testing and budget to the extent that there will not be cost additional to present controllable expenditures”.
>
> ...
>
> 5. With the four and three work cycle, it is possible for the unit to arrange "four day weekends". Scheduling of four-day weekends will be permitted, on an exception basis, provided that it is planned in advance, causes no additional

[15] See, for example, *Cornwall Community Hospital v Ontario Public Service Employees Union*, 2023 CanLII 20273.
[16] See CBA article 10.
[17] IBEW documents, tab 28, PDF page 288/736 - ESIMP article 2.3.

> cost to the Company, and has supervisor approval. Approval will be based on performance criteria and will not be unreasonably withheld.
>
> 6. It is the responsibility of the SDU to keep the Supervisor fully advised of their schedule and subsequent changes. It is not acceptable to pass scheduling problems to the Supervisor without a serious attempt by the SDU to resolve the issue. However, once a scheduling issue is passed to a Supervisor, he will have full authority to solve the issue, which could include the changing of working hours and days off.

48. Similarly, under General Comments, Appendix T notes that the parties agree to work cooperatively but that sometimes a supervisor will have to resolve things:

> It is recognized that some situations for which the SDU is responsible cannot be resolved without the involvement of the Supervisor. On the other hand, the SDU agreement was intended to give employees more opportunity to resolve their own issues. In most situations, employees and Supervisors have worked and will continue to work together to resolve problems. The SDU Agreement was intended to enhance this cooperative approach.

49. The parties have agreed on a concept and indicated their mutual intention to give employees more opportunity to resolve their own issues. One can appreciate the value in this approach since employees often have an important perspective on how best to perform the work given their daily activities.

50. But overall Appendix T remains a concept and does not restrict CN's ability to consider factors such as cost and the efficiency of its operations. The IBEW did not demonstrate that the Appendix T concept, as currently worded, restricted CN's usual ability to decide whether to fill a vacancy. Absent more concrete language, the arbitrator cannot conclude that CN must post a rover position despite its determination that the SDU already had sufficient staff to perform the required work. CN instead decided that the addition of a mechanic would provide the required additional assistance to the SDU.

MUST CN CONSULT THE IBEW UNDER APPENDIX T PRIOR TO DECIDING NOT TO HIRE A NEW ROVER?

Parties' positions

IBEW

51. The IBEW alleged that CN had failed to respect Appendix T's mandatory consultation process prior to posting the mechanic position:

83. In any event, regardless of whether such concerns were genuine, the Company has admitted to deciding to eliminate the Maintainer Rover position first and then finding reasons to support that decision after the fact. The Company has also admitted to not communicating its concerns to the Union prior to making any decisions or taking any action with respect to the Brockville SDU. (In fact, the Company did not even communicate to the Union that it was eliminating the Maintainer Rover position.)

84. The relevance of the Company's failure to consult with the Union about the change it wanted to make to the SDU is twofold. First, it is itself a violation of Appendix T/the SDU Agreement. Second, the fact that the SDU Agreement provides for detailed consultation requirements is consistent with the parties' intent to ensure that each SDU can operate without interference unless proven necessary and unless the SDU has been given opportunities to improve its performance. Unilateral changes by the Company are neither contemplated nor permitted. The Company understood this in 2020 when it accepted the Union's proposal regarding the Kingston Subdivision territory and SDU structure (see Tab 33) and should not be allowed to ignore its obligations now.

...

88. The language of the SDU Agreement plainly states that the Company is entitled to establish performance criteria and provides the Company with specific avenues to act upon its concerns. The Company may advise the Union of its concerns, whether during or outside of the SDU meetings, upon which the SDU will have seven calendar days to review the performance issues and discuss plans of improvement. If the issues remain, then the Company will have the right to revert the SDU to a 5/2 work cycle, upon which the SDU will have 30 calendar days to rectify the performance issues. It is only after the exhaustion of the 30-day period that the Company becomes entitled to dissolve the SDU.

89. The process as set out above is not a mere technical formality that can be dispensed if convenient. Rather, the procedural steps reflect the parties' express intent to allow SDUs the opportunity to resolve their own issues, including performance issues, before the Company steps in:...

...

112. Setting aside the issue of whether the Company's concerns were genuine, disagreements over the "capacity of the SDU to perform its task", to use the phrasing of the Company, is precisely the kind of disputes that are expressly required by the SDU Agreement to be mutually resolved by way of consultation with the Union and with members of the SDU

...

> 117. The Union submits that the Company is impliedly restricted from eliminating the Maintainer Rover position from SDU #3BA because doing so brings about a conflict with Appendix T. Even if one accepts the argument that Appendix T does not expressly prohibit the Company from eliminating the Maintainer Rover position, it is an unavoidable conclusion that leaving SDU #3BA without a Maintainer Rover causes it to stop functioning as intended and providing the benefits to its members as intended by the SDU Agreement.

<u>CN</u>

52. In its Reply, CN argued that Appendix T's consultation process applied only if it wanted to dissolve the SDU and revert back to a regular schedule:

> 8. The Union argues that the Company failed to follow the performance review and consultation procedures set out in Appendix T. However, those procedures address a specific situation — namely, where an SDU is not meeting established performance criteria, leading to reversion to a 5/2 work cycle or dissolution. The Company did not dissolve the SDU, revert it to a 5/2 cycle, or take any punitive action against the SDU's members. The Company simply exercised its management rights in determining how to fill a vacant position based on operational needs. The performance criteria provisions are not applicable to every staffing decision made within an SDU.

Decision

53. The arbitrator can understand the IBEW's frustration when CN seemingly took contradictory positions on the rover issue[18]. Also, for reasons unknown, CN did not respond on a timely basis to the IBEW's grievance.

54. Nonetheless, CN's June 27, 2025 email[19] responded to the IBEW's initial concerns, mentioned "abolishing the rover position by attrition" and explained some of the performance reasons behind the decision.

55. For ease of reference, Appendix T states under the heading General Comments:

> It is further understood that should any Self Directed Unit not meet the established performance criteria, the Union (regional representative) will be advised of the situation and the parties will review the issues within 7 calendar days and after such review, if the required improvements are not met by said SDU, then the Company will have the right to revert this SDU to a 5/2 work cycle until such time that the Company is satisfied that it can meet the established performance criteria.

[18] IBEW documents, tab 19, PDF page 183/736.
[19] IBEW documents, tab 20, PDF page 186/736.

> Once reverted to a 5/2 cycle, the General Chairman will be advised. If after 30 calendar days, the required improvements are not met by said SDU, the SDU will be dissolved and those employees will no longer be governed by this Appendix. However, the General Chairman may approach the Company to review restoring the SDU after 6 months have elapsed, if circumstances have changed.

56. The IBEW did not demonstrate that this language, as drafted, applied to any SDU change CN decided to make, such as whether to fill a vacancy. This "consultation" language restricts CN's ability to dissolve the SDU. In that circumstance, CN has agreed to review the situation with the IBEW prior to reverting to the CBA's 5/2 work cycle.

57. In the instant case, CN never sought to dissolve the SDU. Rather, this case involved CN's staffing decision arising from the incumbent rover's dismissal and the related evaluation of the SDU's performance. CN did not violate any duty to consult under Appendix T.

DID THE FAILURE TO POST THE ROVER POSITION VIOLATE THE PARTIES' EMPLOYMENT SECURITY AND INCOME MAINTENANCE PLAN?

Employment Security and Income Maintenance Plan (ESIMP)

58. The ESIMP[20] defines both a "Technological Change" and an "Operational and Organizational Change" (collectively, TO&O):

> H. "Technological Change" means: the introduction by the employer into his work, undertaking or business of equipment or material or a different nature or kind than that previously utilized by him in the operation of the work, undertaking or business; or
>
> "Operational or Organizational Change" means: a change in the manner, method, procedure or organizational structure by which the employer carries on the work, undertaking or business not directly related to the introduction of equipment or material provided that any such change is not brought about by:
>
> > (i) a permanent decrease in the volume of traffic outside of the control of the company; or
> > (ii) a normal reassignment of duties arising out of the nature of the work in which the employee is engaged; or
> > (iii) a normal seasonal staff adjustment.

[20] IBEW documents, tab 28, PDF page 122/736.

59. The ESIMP explicitly grants an arbitrator the authority to resolve disputes:

> Dispute Resolution
>
> 2.3 Should the Labour Adjustment Committee be unable to resolve the issues referred to them under Paragraph 2.2, the item(s) remaining in dispute may be referred to an Arbitrator as set out in the "final Settlement of Disputes" provisions of the collective agreement. The items to be decided by the Arbitrator shall not include the right of the Company to make the change or the implementation date.

60. ESIMP article 8 describes the required procedure, including advance notice to its unions, when CN plans to put into effect a TO&O:

> 8.1
>
> (a) The Company will not put into effect any Technological, Operational or Organizational change of a permanent nature which will have adverse effects on employees holding permanent positions without giving as much advance notice as possible to the System General Chairman representing such employees or such other officer or as may be named by the Union concerned to receive such notices.
>
> In any event, not less than 120 days' notice shall be given, with a full description thereof and with appropriate details as to the consequent changes in working conditions and the expected number of employees who would be adversely affected.

Parties' positions

<u>IBEW</u>

61. The IBEW argued that no ESIMP exception allowed CN to abolish the Brockville SDU's rover position:

> 122. In particular, the Union submits that the abolishment of the Maintainer Rover position is not "a normal reassignment of duties arising out of the nature of the work in which the employee is engaged". For the reasons already set out above, even if one accepts that the Company has reassigned Rover duties rather than abolished the Rover position (which the Union denies, as has been explained above, because Rover duties cannot be performed by the Mechanic position), the reassignment is by no means a "normal" situation contemplated by the SDU Agreement. In fact, the SDU Agreement contemplates the opposite (i.e. that there will be a Rover in each SDU).
>
> …

> 128. In addition, Article 2 of ESIMP mandates the creation of a Labour Adjustment Committee which will meet "as often as is deemed appropriate" to discuss and resolve disputes as to the deployment or utilization of employees.
>
> 129. The Union therefore submits that the provisions of ESIMP apply, and that the Company has failed to establish a Labour Adjustment Committee and provided advance notice to the Union, contrary to ESIMP.

<u>CN</u>

62. CN denied that any TO&O had occurred given the facts in this case:

> 107. The Company's position is that there was no change in the manner, method, procedure, or organizational structure by which the work is carried out that would trigger the ESIMP.
>
> 108. The Company also maintains that the SDU is fully staffed with six Maintainers and that Appendix T does not require the seven-person configuration advanced by the Union.
>
> ...
>
> 112. Article 8.1 of the ESIMP applies only where a permanent Technological, Operational or Organizational change will have adverse effects on employees holding permanent positions.
>
> ...
>
> 114. The posting did not reduce the bargaining unit, lay off any employee, displace any employee, reduce rates of pay, or otherwise trigger the benefits and protections contemplated by the ESIMP.
>
> ...
>
> 119. Reassigning the work of the rover to a mechanic position is clearly captured in point ii) above as an exception to an Operational and Organizational change and falls within the purview of the employer's managerial rights.
>
> 120. Additionally, the SDU is still functioning to this day with 6 maintainers. The work remained the same and the work of the relief duties the rover would have completed were reassigned between the 6 maintainers.
>
> ...
>
> 126. The Union has provided no evidence that any employee lost employment, was displaced, suffered a reduction in basic rate, lost a permanent position, or experienced a material change in working conditions as a result of the posting.

63. In its Reply, CN argued that no TO&O under the ESIMP had occurred:

> 12. The Union’s ESIMP argument fails for the straightforward reason that no Technological, Operational, or Organizational change occurred within the meaning of the ESIMP. The SDU continues to operate with six Maintainers performing the same core duties. No employee was laid off, displaced, reduced in pay, or otherwise adversely affected. The reassignment of duties is precisely the type of “normal reassignment of duties arising out of the nature of the work” that is expressly excluded from the ESIMP definition of Operational or Organizational change. The Union’s failure to file a grievance during the five-month period when no Rover was in place, and the SDU’s failure to claim penalty payments during that time, further demonstrate that no adverse effects existed. The Union cannot now argue in arbitration that adverse effects will occur when they demonstrably did not occur during an extended period of operation without a Rover.

Analysis

64. In AH724[21], the arbitrator considered similar ESIMP language and noted how fact specific these types of cases remain.

65. In CROA 284[22], Arbitrator Weatherill dealt with an early version of CN’s ESIMP and concluded that a decision to have work done by fewer employees did not constitute an operational change:

> The organizational or operational change, if any, would appear to have been in the reduction of mail deliveries. This is, as is the abolition of a position, a change of “operations” in a narrow sense, but it is not necessarily an “operational change” of the sort referred to in Article VIII of the Job Security Agreement. The collective agreement itself contemplates a number of situations in which there may be such changes, and providing for the rights of employees in such cases, which clearly do not involve the special provisions of Article VIII. **Here, the company simply found that the work it had to do could be done by fewer employees. There was no longer a need for as many mail deliveries per day. There is no evidence of any special circumstance which would take this out of the area of “normal reassignment of duties” referred to in Article VIII (5).**
>
> In any event, no employee suffered any adverse effects, in my view, as a result of the change. Mr. Cleary transferred to a higher-rated job, and it is not suggested that he had to move to another community. While no doubt the opportunities for other employees were limited to the extent of there being one less job available, it may be doubted although in view of my decision in this case

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[21] *Canadian Signals and Communications System Council No. 11 of The IBEW v Canadian Pacific Railway Company (CP)*, 2021 CanLII 73282

[22] CROA 284. See also CROA 316.

> it is not necessary to decide the point– whether this is the sort of adverse affect for which Article VIII is intended to provide relief.
>
> (Emphasis added)

66. In CROA 3070[23], Arbitrator Picher noted that the abolition of a single position represented only one factor when analyzing the TO&O concept:

> It is understandable that an individual employee might feel that the permanent elimination of his or her job constitutes organizational change. However, as the definitions section of the JSA indicates, whether a change is operational or organizational must be analysed in a much broader perspective, having regard to the “manner, method, procedure or organizational structure” within which work is carried out by the Company. Further insight is gathered from the “Note” to the definition section which makes reference to the shutdown of all or part of an operation, facility or installation. **Nowhere in the scheme of the Job Security Agreement is there any suggestion that the elimination of a job as a general cost cutting measure, without any fundamental change to the Company’s operations or organizational structures, of itself requires the issuing of a notice under article 8 of the JSA, with all of the attendant procedures and substantive protections which that involves.**
>
> (Emphasis added)

67. Conversely, in AH573[24], when an S&C Maintainer’s position had been abolished and the resulting bumping significantly impacted another employee’s wages, Arbitrator Picher found a TO&O had occurred:

> It is also well established that the abolishment of a single position can, of itself, constitute an operational or organizational change. For example, in CROA 3447 the abolishment of a single foreman’s position at a butt welding plant was found to constitute an operational or organizational change. In the analysis of that case the Arbitrator dealt with the issue of whether the change constituted a normal reassignment of duties arising out of the nature of the work, an exception to the definition of an operational or organizational change. In that regard he commented, in part, as follows:
>
>> … This is not a case, for example, of the relocation of work from one place to another which eliminates the need for a given position or, for another example, an adjustment in employee complement by reason of the abolishment of a train or some other part of the Company’s enterprise. **In**

---

[23] CROA 3070.

[24] AH573 - Canadian Pacific Railway Company v. International Brotherhood of Electrical Workers System Council No. 11 (Pelto).

> **the case at hand there is simply no change whatsoever in the plant or the work it performs, save that the Company has determined that it can do without a first line supervisor in the relatively small operation at Surrey**. That is clearly an organizational or operational change, and cannot be fairly be characterized as a normal reassignment of duties inherent in the nature of the work of the production and maintenance foreman, or of the work performed generally within the butt welding plant.

In the Arbitrator's view the above reasoning applies four-square to the case at hand. **In this case, to achieve budgetary efficiencies, the Company decided to do with one less S&C Maintainer working out of the Sudbury West Terminal. That was achieved by abolishing the grievor's position, a change which triggered a sequence of job displacements terminating in the creation of a temporary position for Mr. Byrnes, a measure which apparently finally avoided the cost of re-locating an employee to another terminal**.

(Emphasis added)

68. The arbitrator has concluded that the decision to bulletin a mechanic position, rather than a rover, did not constitute a TO&O. As noted above, the concept described in Appendix T did not prevent CN, based on its analysis of performance, from deciding to use a mechanic rather than appoint a new rover. Two reasons support this conclusion.

69. First, this type of decision falls within exception #2 the parties included in the ESIMP:

> (ii) a normal reassignment of duties arising out of the nature of the work in which the employee is engaged

70. Second, the ESIMP requires CN to give notice when a TO&O will "have adverse effects on employees holding permanent positions". The IBEW did not demonstrate how CN's decision to use a mechanic rather than hire a new rover impacted any of the employees holding permanent positions. Unlike the situation in AH573, CN did not decide to do the same work but with one less person. Rather, it decided to reassign some of the duties to a mechanic after analyzing the situation.

71. Understandably, the employees in the Brockville would prefer to have an SDU with 7 members. But, as concluded above, Appendix T did not mandate that number.

DISPOSITION

72. For the foregoing reasons, the IBEW did not meet its burden to show that CN had failed to respect its Appendix T obligations. The arbitrator understands the challenge it faced given that it was dealing with a concept rather than concrete CBA language about the composition of every SDU.

73. The arbitrator must respectfully dismiss the IBEW's grievance given Appendix T's current wording.

SIGNED at Ottawa this 29th day of July 2026.

____
Graham J. Clarke
Arbitrator