IN THE MATTER OF AN ARBITRATION

BETWEEN

CANADIAN NATIONAL RAILWAY COMPANY

(the "Company" or "CN")

and

TEAMSTERS CANADA RAIL CONFERENCE

(the "Union" or "TCRC")

GRIEVANCE OF CONDUCTOR FERNS
Concerning Article 51 of Agreement 4.16
AH-760-S

SOLE ARBITRATOR: John Stout

APPEARANCES:
For the Company:
Richard Charney – Norton Rose Fulbright Canada LLP
Samantha Cass – Norton Rose Fulbright Canada LLP

For the Union:
Ken Stuebing - Caley Wray

HEARING HELD BY WRITTEN SUBMISSIONS

INTRODUCTION

[1] I was appointed by the parties pursuant to a Letter of Understanding made in accordance with item 21 of the November 26, 2019, Memorandum of Settlement between CN and the TCRC-Conductors, Trainmen, Yardpersons (CTY), which establishes an arbitration process that conforms to the respective Grievance Procedure(s) and the Canadian Railway Office of Arbitration & Dispute Resolution (CROA&DR) rules and procedures.

[2] The parties referred to me the December 11, 2017, grievance of Conductor Ferns filed under the 4.16 Collective Agreement. Conductor Ferns was employed by CN working out of the Sarnia, Ontario Terminal at the time the grievance was filed. The dispute between the parties involves an incident on November 3, 2017, when Conductor Ferns was ordered on train M383 with an on-duty time of 1510 and his rest due at 0110 November 4, 2017. Conductor Ferns did not register off duty until 0315 on November 4, 2017, which was two hours and 5 minutes past the time rest was due to commence. The TCRC was seeking a "significant remedy" in the amount of 1,000 miles at Yard Conductor rates of pay under the provisions of Addendum 123 of the 4.16 Collective Agreement. CN denied any violation of the 4.16 Collective Agreement.

[3] A hearing was held by videoconference on January 6, 2022. The parties filed extensive written briefs prior to the hearing. I issued an award on January 17, 2022 (the "**AH-760**").

[4] In **AH-760**, I made the following findings:

> I find that the Company did not act in a timely manner, and they did not make reasonable efforts to have appropriate resources in place to ensure that Conductor Ferns was provided relief by the time rest booked was due to commence. Therefore, I also find that the Company violated Article 51 of Agreement 4.16.
>
> …
>
> Leaving aside the Company's position that Addendum 123 requires a joint process, I am of the view that Addendum 123 does not apply

> in these circumstances. While the Company's conduct was unreasonable and, in some ways negligent, I agree with them that their conduct was not blatant and indefensible. I accept that the Company acted in good faith when they assessed the situation and they believed that they would be able to provide transportation for relief. However, they did not act within a reasonable period of time, and they did not make reasonable efforts to have the appropriate resources in place to ensure that Conductor Ferns was provided with the rest that he is entitled to under Article 51.
>
> Having found that the Union's requested remedy pursuant to Addendum 123 does not apply to the circumstances before me, it is my view that the issue of remedy ought to be remitted back to the parties for resolution.
>
> I shall remain seized to address the issue of remedy in the event that the parties cannot agree upon a remedy within a reasonable period of time.

[5] The Union wrote to me on May 27, 2025, advising that the parties were unable to resolve the remedy issue and requesting my assistance in resolving the dispute. CN responded on June 3, 2025, objecting to the Union's "attempt to re-open this matter and adjudicate the issue of remedy." CN argued that my jurisdiction was "expired" due to the delay in bringing the matter back before me. In addition, CN raised a preliminary objection based on the equitable doctrine of laches, arguing that the Union should be barred from "resurrecting" the matter.

[6] On June 27, 2025, I wrote the parties and advised them that in my view the preliminary objection could not be determined in a vacuum. In order to resolve the preliminary objection I had to know what remedy the Union was seeking. I therefore directed the Union to particularize the remedy being sought, and I offered the parties the opportunity to provide additional submissions relating to such remedy.

[7] On August 8, 2025, after carefully considering the parties' submissions, I dismissed CN's preliminary objection and asked the parties if I could resolve the remedy dispute based on the submissions already filed. Both parties agreed that I could resolve the outstanding issue based on the submissions previously filed and

the TCRC requested that I include my reasons for dismissing the preliminary objection in my award.

[8] After carefully considering the parties' submissions, and for reasons elaborated upon below, I am issuing a declaration, and no other remedy is being granted.

THE ISSUE IN DISPUTE

[9] The Union seeks a remedy payment of 150 miles at the applicable Yard Conductor rate for the rest violation in **AH-760**. CN argues that I must dismiss the remedy for delay or in the alternative only grant a declaration.

AWARD OF THE ARBITRATOR

CN's preliminary objection

[10] The first issue to be addressed is CN's preliminary objection that the request to adjudicate the remedy issue should be dismissed due to delay based on the application of the principle of laches.

[11] In **AH-760**, I found that the substantial deterrent remedy found in Addendum 123 did not apply. I remitted the issue of remedy back to the parties and I remained seized to address the issue in the event that the parties could not agree upon a remedy within a reasonable amount of time.

[12] The parties have been unable to resolve the issue of remedy. As a result, there is an issue fairly raised by the grievance referred to me that remains outstanding. The grievance has not been fully and finally resolved. In my view, I not only have jurisdiction to address this issue, but I would be abdicating my responsibility if I did not dispose of this issue fully and finally, see *Chandler v. Alberta Assoc. of Architects* [1989] 2 SCR 848.

[13] In *Nor-Man Regional Health Authority Inc. v. Manitoba Association of Health Care Professionals,* [2011] 3 SCR 6161, the Supreme Court of Canada recognized and endorsed the broad statutory and contractual mandate of labour arbitrators to fashion reasonable and appropriate labour relations remedies, including applying common law and equitable principles such as laches in a labour relations context.

[14] The equitable principle of laches has been applied by arbitrators on a preliminary basis to dismiss grievances for delay, see *Sofina Food Inc v. UFCW Local 401*, 2019 CanLII 50330 (AB LA) and *National Gallery of Canada v. PSAC (Surplus List),* 2016 CanLII 81115 (CAN LA).

[15] The only case provided by the parties addressing a preliminary motion to dismiss a remedy request for delay is the New Brunswick Labour Relations Board decision of *USW, Local 1-306 v. BWS Manufacturing Ltd.,* 2018 CanLII 39851 (NBLRB). In that case, the preliminary objection was dismissed after the Board found that "the Employer failed to demonstrate the serious prejudice required to sustain a dismissal for delay."

[16] I accept that the test for applying laches to dismiss a request for a remedy is the establishment of serious prejudice. Therefore in order to succeed on the preliminary objection CN must demonstrate that adjudicating the request for a remedy causes "serious prejudice".

[17] CN has not proven serious prejudice. While both Conductor Fern and CN's labour relations representative have left their employment, CN has not particularized what, if any, evidence would be needed from either of these two individuals. CN also submits that Conductor Fern claimed and was paid a "Late reaching claim" of $72.91. CN argues that they are prejudiced by being unable to reclaim this "overpayment" since Conductor Fern has left his employment. This is not serious prejudice in my opinion. As will be seen, I have taken this payment into account in making my remedial order. The fact is that there are no facts in dispute

that require any evidence, and CN is in no way prejudiced in advancing their arguments in this matter. The fact that the parties have agreed that I can resolve the issue based on the written submissions confirms that a fair hearing of the issue can be undertaken. Serious prejudice would be of the kind that would adversely affect the ability to have a fair hearing, such as the ability to present one's case.

The Union's request for a monetary remedy

[18] Turning to the Union's requested remedy, the Union argues that in these circumstances I ought to order the payment of 150 miles at the applicable Yard Conductor rate for the rest violation as a "deterrent" against future rest violations. The Union submits that this would represent 50% (300 miles) of what it would have cost the Company in the event they had properly called a relief crew.

[19] The Company disagrees with the Union, arguing that the request is unreasonable and not reflective of the rates paid to Conductor Fern who worked in freight service. CN also takes issue with the Union's assertion of the amount representing 50% of the cost to provide relief. CN takes the position that there is no support for the requested remedy in the Collective Agreement or the case law.

[20] In **AH-829-S**, I addressed the considerations that apply when determining an appropriate remedy. I will not repeat those considerations in this award other than to state that it is well accepted that generally, damages awarded for breach of a collective agreement are compensatory in nature and designed to place the aggrieved party in the position they would have been had the collective agreement not been violated.

[21] In **AH-760** I found that a deterrent remedy pursuant to Addendum 123 does not apply in these circumstances. This is a relevant distinction from the situations found in **AH-829-S**, and **AH-864**, which are relied upon by the Union. The facts in this case are also different from *Canadian Pacific Railway v. TCRC*,

2019 CanLII 84564. In any event, each case ought to be decided based on its own facts.

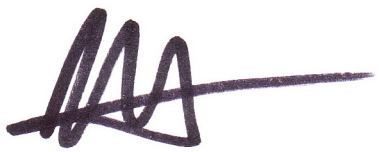
[22] In this case, Conductor Fern was delayed rest by 2 hours and 5 minutes. During this time, his train was stopped at Kerwood until the Transportation Supervisor arrived with a relief crew and transported Conductor Ferns back to Sarnia for his rest. Conductor Fern claimed and was paid a late reaching payment to compensate him for the delay in providing rest. I have no evidence of any other loss by Conductor Fern. Conductor Fern has not worked for CN since 2019.

[23] I also found that the Company acted in good faith. The events that gave rise to this dispute happened over seven years ago and the Union waited over three years to seek my intervention. I fail to see how granting the remedy sought by the Union will advance labour relations between these parties. I am of the opinion that awarding damages as a deterrent is not appropriate in these circumstances and arguably contrary to my earlier decision.

[24] In my view, Conductor Fern has already been compensated for his loss. Any additional monetary remedy would be punitive and serve no useful labour relations purpose. This is particularly so when a deterrent remedy under Addendum 123 has already been found not to apply. Therefore, a declaration is the only additional remedy that I am ordering.

[25] There is no need for me to remain seized.

Dated at Toronto, Ontario this 14th day of August 2025.



John Stout - Arbitrator