

RECOMMENDATION

**SUBMITTED BY RICHARD PAGÉ
CONCILIATOR/MEDIATOR
FEDERAL MEDIATION AND CONCILIATION SERVICE**

**IN CONNECTION WITH
THE RENEWAL OF THE COLLECTIVE AGREEMENT**

between

**VIA RAIL CANADA INC.
Hereafter referred to as "THE EMPLOYER"**

and

**TEAMSTERS CANADA RAIL CONFERENCE
(Collective agreements 1.4 and 4.2)
Hereafter referred to as "THE UNION"**

**Montreal, June 3rd, 2015
REF: YM2867-1330B.14**



Preamble

The intent of this document is to present to the parties a recommendation covering all aspects related to the renewal of the Collective Agreements that expired on December 31st, 2014.

The parties have to consider this recommendation globally and accept it or reject it as a whole.

In the event of a refusal by one or the other parties, it is understood and agreed by the parties that this document will not be used later on and that the parties shall not subpoena the conciliator to require him to submit his notes or file.

Before presenting this recommendation, I took into consideration the fact that the parties used all mechanisms at their disposal and made a lot of efforts to achieve a satisfactory global settlement in a difficult context.

Although a settlement could not be concluded on all matters, the parties have to consider that a maximum of issues that could be settled has been achieved.

This recommendation is presented without prejudice to either party and is offered solely for the purpose of facilitating resolution of this complex issue and assisting the parties in finding mutually acceptable solutions. This recommendation is submitted without judgement on the merits of either party's position on unresolved issues .

This recommendation includes three (3) appendices:

- A. Issues that have been settled and language that has been agreed;
- B. Issues that remain unsettled;
- C. Terms and reference for voluntary arbitration in accordance with Article 79 (1) of Part I of the Canadian Labor Code.

History

During the fall of 2014, the parties met informally to discuss their own concerns and challenges regarding the renewal of the Collective Agreement that was going to expire on December 31st, 2014.

The parties identified 3 major issues that were going to be address during negotiations:

- LVVR (Locomotive Video Voice Recorder);
- Pension issues;
- Wages and benefits;

On December 4th, 2014 the notice was served to commence bargaining. On December 16, 2014 the parties served a notice of dispute to the Federal Mediation and Conciliation Service (FMCS).

On January 2nd, 2015 I was appointed as the Conciliation Officer for this file. On February 24th and 25th, 2015 the parties entered into negotiations for the renewal of the Collective Agreement that expired on December 31st, 2014.

Conciliation meetings took place in 2015 on February 24th, 25th, March 3rd, 4th, 5th, 17th, 18th, 24th, 25th, 31st, April 1st, 28th, 29, 30th, June 1st and 3rd, 2015 and after extensive bargaining the parties could not reach a settlement on all matters.

RECOMMENDATION

- WHEREAS the parties commenced the bargaining process for the renewal of Collective Agreements 1.4 and 4.2 on or around February 24th, 2015; and
- WHEREAS that the Ministry of Labour has closely monitored all stages of their negotiations; and
- WHEREAS all involved recognize the importance of the current situation, regarding the level of employment, the safety, the competitiveness, and the stability of the relationship; and
- WHEREAS a broad analysis of all facets of the problem should be made; and
- WHEREAS some issues have been voluntarily and freely agreed upon between the parties on April 30th, 2015; and
- WHEREAS the “wages” and “Pension” issues remain a source of friction and are of great interest to the Union and the Employer; and
- WHEREAS the parties recognize that these issues need to be addressed; and
- WHEREAS the Union and the Employer; agree that solutions need to be found; and
- WHEREAS the Employer and the Union appreciate the help rendered by the FMCS to date and have agreed to seek their on-going assistance on this issue;

THE FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS) RECOMMENDS THAT:

1. All texts and or articles that appear in Appendix “A” are accepted and agreed and will become effective on the first on the month following ratification or on the ratification day;
2. The parties will present to Arbitration all unresolved issues that appear in Appendix “B”;

3. The Arbitration panel will be chaired by Arbitrator Michel Picher and each party will appoint a representative on the panel; one by the Union and one by the Employer;
4. The arbitration panel is being put in place in accordance with Article 79 of Part I of the Canadian Labor Board Code;
5. The arbitration panel has all powers under Articles 58, 60, 61 and 63;
6. Appendix "C" establishes Terms and Reference for the arbitration;
7. The current Collective Agreement remains in effect between the signature of this document and the arbitration's decision

The Parties acknowledge receipt of the Recommendation from the Conciliator on June 3, 2015. The Union commits to forward these Recommendations to the membership for their consideration.

Signed in Montreal on June 3rd, 2015

Federal Mediation and Conciliation Services



Richard Pagé

Via Rail Canada Inc.



Edward Houlihan



Gilbert Sarazin



Wade Buckley

Teamsters Canada Rail Conference



Roland Hackl



Bruce Willows



Jean-Michel Hallé



Bill Michael



Philip Hope



Bob Ermet

Appendix "A"

Term of Agreement

The Parties agree to the renewal of Collective Agreements 1.4 and 4.2 for a three (3) year term commencing January 1 , 2015 and ending December 31st 2017.

Dated at Montreal the 3rd day of June, 2015

Edward Houlihan

Director, Employee Relations

Roland Hackl

National Vice-President

Gilbert Sarazin

Senior Advisor Labour Relations

Jean-Michel Hallé

General Chairman

Wade Buckley

Manager Train Operations

William Michael

General Chairman

Phil Hope

Vice-General Chairman

Bruce Willows

General Chairman

Bob Ermet

Vice-General Chairman

Benefits

For employees on or after January 1, 2015, their eligibility for Benefits will be standardized as follows:

Short term disability, life insurance and accidental death benefit – the first of the month following 60 days of service

Extended Health Care and dental benefits – the first of the month following 126 days of cumulated compensated service

Dated at Montreal the 3rd day of June, 2015

Edward Houlihan
Director, Employee Relations

Gilbert Sarazin
Senior Advisor Labour Relations

Wade Buckley
Manager Train Operations

Roland Hackl
National Vice-President

Jean-Michel Hallé
General Chairman

William Michael
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Vice-General Chairman

Bruce Willows

General Chairman

Bob Ermet

Vice-General Chairman

Letter of Understanding – Not to form part of the Collective Agreement

Re: Locomotive Video/Voice Recording (“LVVR”)

Whereas the issue of LVVR has been a topic of discussion between the VIA Rail Canada Inc. (the “Corporation”) and Teamsters Canada Rail Conference (“TCRC”) for some time;

And Whereas the Corporation and the TCRC have come to understand that although the technology is available for LVVR, the use of the recordings is a difficult balance between the safety of the operation and personal privacy as well as working conditions in the locomotive cab;

Now therefore the parties have agreed to a protocol that enhances the over-all safety of operations for the Corporation while minimizing the impact on personal privacy and working conditions.

1. Internal LVVR recordings can only be used at the request of the Transportation Safety Board for the purpose of incident/accident investigation.
2. The review of the LVVR footage or recordings by any other agency or individuals is prohibited save and except for the employee of the Corporation who is required to retrieve the footage / recordings for the Transportation Safety Board.
3. The LVVR recording cannot be reviewed by the Corporation for the purpose of performance testing of locomotive engineers, subject to below.
4. In the event the government enacts legislation that enables the Corporation to utilize LVVR for other than review by the Transportation Safety Board only, the parties agree to meet with the assistance of FMCS if necessary and discuss the terms and conditions governing such technology and the use of the information obtained through LVVR.
5. The use of such technology, other than as permitted by law, shall not occur without the agreement of the parties.
6. This letter of understanding will remain in force for the duration of the current collective agreement.

Dated at Montreal the 3rd day of June, 2015

Edward Houlihan
Director, Employee Relations

Gilbert Sarazin
Senior Advisor Labour Relations

Wade Buckley
Manager Train Operations

Roland Hackl
National Vice-President

Jean-Michel Hallé
General Chairman

William Michael
General Chairman

Phil Hope
Vice-General Chairman

Bruce Willows
General Chairman

Bob Ermet
Vice-General Chairman

Clarification of the Rail Pass Program

Not to form part of the Collective Agreement

June 3rd, 2015

J-M. Halle

Bill Michael

Bruce Willows

R. Hackl

RE: VIA Rail Pass Program

During this round of bargaining there were discussions regarding the application of the new VIA Rail Pass Program. The concern raised was the requirement that locomotive engineers at VIA would require 10 years in the VIA pension plan to be eligible for a Rail Pass on retirement. It was felt that given the age and service of Locomotive Engineers eligible to transfer to VIA from CN under the terms of the Special Agreement only those who chose to transfer their pension to VIA would obtain a Rail Pass on retirement.

In recognition of the status conferred under the Special Agreement the Corporation will amend the Rail Pass Program such that Locomotive Engineers who have transferred or will transfer to VIA Rail from CN under the terms of the Special Agreement and do not transfer their pension to VIA will be eligible for a Rail Pass on their retirement without 10 years in the VIA pension plan.

Dated at Montreal the day of

Edward J. Houlihan

Director Employee Relations

Letter of Clarification – Not to form part of the Collective Agreement

June 3rd, 2015

J-M. Halle

Bill Michael

Bruce Willows

R. Hackl

Re: Standardized Payment for Rescuing Trains

During this round of bargaining there were discussions regarding the need for standardizing payment for crews rescuing trains that are unable to reach the destination terminal.

The parties agreed that the appropriate payment would be a basic day of four hours (or actual time if greater than four hours) over and above the guarantee paid by separate ticket to the crew required to rescue a train. The only exception will be rescues that occur between Sioux Lookout and Armstrong due to the special circumstances at that location. As the crews operating Eastward to Sioux Lookout are paid each trip as if they worked to Armstrong, these crews will be paid two hours (or actual time if greater than two hours) over and above the guarantee by separate ticket.

Edward J. Houlihan

Director Employee Relations

Not to form part of the Collective Agreement

R. Hackl

J-M. Halle

Bill Michael

Bruce Willows

Re: Switching - Article 9 Collective Agreement 1.4

During this round of bargaining there were discussions as to the application of Article 9 for locomotive engineers switching at initial or final terminal not in connection with their train.

The particular circumstances existing at the Jasper Terminal makes the application of Article 9 problematic. Accordingly, in the event the locomotive engineers at Jasper operating trains No. 5 or No. 6 (the "Skeena") are required to switch equipment not in connection with their train, No. 5 or No. 6, they will be paid two hours (or actual time if greater than two hours) over and above by separate ticket.

Switching by the locomotive engineers at Jasper involving trains No.1 or No.2 will continue to be paid in accordance with Article 9 of Collective Agreement 1.4.

Dated at Montreal the 3rd day of June , 2015

Ed Houlihan

Director Employee Relations

Letter of Understanding – Not to form part of the Collective Agreement

In the current round of bargaining the Corporation and the TCRC discussed the issue of improved train handling practices and fuel savings. The parties acknowledged that reduced fuel consumption is of benefit to the environment and would reduce costs to the Corporation. The parties discussed an incentive program to achieve these benefits as quickly as possible and share some of the resulting savings with the Locomotive Engineers.

Therefore the parties agree to meet within sixty days of the ratification of the memorandum of agreement renewing the Collective Agreement to discuss and develop an appropriate program to share some of the savings from reduced fuel consumption resulting from improved train handling practices. Any program developed must be satisfactory to both the TCRC and the Corporation.

If the parties are unable to reach an agreement on an appropriate program within 60 days of the first meeting, this commitment is at an end unless otherwise agreed by the parties.

Dated at Montreal the 3rd day of June, 2015

Edward Houlihan

Director, Labour Relations

Letter of Understanding – Not to form part of the Collective Agreement

June 3rd, 2015

J-M. Halle

Bill Michael

Bruce Willows

R. Hackl

Re: Payment of Training Hours

During this round of bargaining the TCRC raised the issue of payment for training and protection of guarantee. The concern is that in certain circumstances, locomotive engineers were effectively not being paid for training hours while having their guarantee protected.

Following several discussions on this matter, the Corporation will provide a working document identifying the various scenarios discussed at bargaining in order to standardize the process among the Crew Management Office and ensure proper payment of Training hours.

Yours Very Truly

Edward Houlihan

Director Labour Relations

Not to form part of the Collective Agreement

Training hours – Appendix 7 a)

Scenarios												Comments
1	16	24	16	24	16	24	16	24	160	16	184	Base line - worked 176 hours - paid OT
2	16	24	16	24	16	24	16	24	160	16	176	Worked 160 hours then came in for two days of training Worked 160 hours then came in for on day of training
3	16	24	16	24	16	24	16	24	160	8/8	176	(scheduled for a 16 hour trip)
4	16	24	16	24	16	24	16	24	160	16	176	Missed a trip and came in for two days training
5	16	24	16	24	16	24	16	136	16			Missed a trip and came in for two days training did not reach 160
6	16	24	16	24	16	24	16	24	136	16	152	booked sick - missed 24 hours then worked an extra 16 hours
7	16	24	16	24	16	24	16	24	136	16	152	booked sick - missed 24 hours then did 2 days training
8	16	24	16	24	16	24	16	24	136	16	152	missed 24 hour trip came in for two days training

Training

Sick

Unavailable

Not to form part of the Collective Agreement

Agreement for Expedited Arbitration

During this past round of bargaining, both parties raised concerns with respect to the ability to have matters scheduled for arbitration at CROA. While it is presently the intent of both parties to remain within the CROA system, the parties have, without prejudice to the foregoing, recognized that there may be benefit in having an alternate arbitration process in the event that the parties agree that the CROA system is not appropriate at any point during the life of the collective agreement.

Accordingly, the parties agree that, upon written mutual agreement of all General Chairmen and the Director of ER, the following shall apply.

- Upon written agreement between the Director of ER and all General Chairmen signatory to the collective agreement the parties will no longer use CROA for grievance arbitration and for the duration of the collective agreement an alternate expedited arbitration process shall be used following the current CROA rules, including the following:
 - Any matter that has been advanced through the grievance procedure (in accordance with article 21.3 and note attached thereto) to the point of arbitration may be advanced to arbitration upon sixty days' notice.
 - All existing CROA rules and policies will be followed with respect to such grievances.
 - The parties will mutually agree to an Arbitrator – with preference given firstly to Michel Picher, secondly to Ted Weatherhill, subject to availability. Should both arbitrators be unavailable, each party shall provide a list of three names to the Minister of Labour who shall appoint from such lists, firstly on an arbitrator common to both lists, secondly from a non-common suggestion from the lists, and, thirdly, an arbitrator acceptable to the Minister.
 - Hearings shall be heard in Montreal. In order of preference the venue will be the CROA offices, the FMCS offices and, if neither are available, VIA facilities.

- Costs of the arbitration hearing shall be divided equally between the parties.
Each party shall bear their own respective costs of arbitration

Dated at Montreal the 3rd day of June, 2015

Edward Houlihan
Director, Employee Relations

Gilbert Sarazin
Senior Advisor Labour Relations

Wade Buckley
Manager Train Operations

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National Vice-President

Jean-Michel Hallé
General Chairman

William Michael
General Chairman

Phil Hope
Vice-General Chairman

Bruce Willows
General Chairman

Bob Ermet
Vice-General Chairman

The parties agreed that all employees would have the option of bidding full entitlement regardless of previous years compensated service.

- 24.14
- (a) When employees bid for Annual Vacation they shall make an irrevocable choice between the vacation allotment reflective of their time worked/compensated in the previous calendar year or their vacation entitlement, without reduction. Maintenance of Earnings will not be paid for vacation entitlement without reduction.
 - (b) Insofar as practicable, preference shall be given in order of seniority of the applicants where applications for vacation have been filed on or before November 30th of the year prior.; Such preference shall not be granted where applications have been filed after November 30th. Employees must take their vacation at the time allotted and those who do not apply for it prior to November 30th shall be required to take their vacation at a time prescribed by the Corporation.
 - (c) Employees will apply for their vacation at the location which is their permanent home terminal. An employee who has been awarded vacation on the basis of this Article and subsequently moves permanently to a new home terminal will be permitted to retain vacation dates awarded for that year.

NOTE 1: Employees who, in the application of seniority rules, are required to perform service, part as a locomotive engineer and part as a trainman or yardman, will be allotted vacation period on a six-month basis, i.e., if the preponderance of work in the previous year was performed as a trainman or yardman, the employee would be granted vacation date(s) on the appropriate trainman's or yardman's vacation list; if the preponderance of work in the previous year was performed as a locomotive engineer, then the employee would be granted vacation date(s) on the locomotive engineer's vacation list. Disputes from individual employees arising from this arrangement are to be settled by the proper Officer of the Corporation and the Local Chairman concerned.

NOTE 2: An employee entitled to less than three weeks' vacation will not be permitted to split his vacation.

An employee entitled to three weeks' annual vacation may split his vacation once on the basis of one week and two weeks or vice versa.

An employee entitled to four weeks' annual vacation may split his vacation once on the basis of two weeks and two weeks or one week and three weeks or vice versa.

An employee entitled to five weeks' annual vacation may split his vacation twice, e.g. two weeks, two weeks and one week or other weekly combinations.

Letter of Understanding – Not to form part of the Collective Agreement

Re: Defined Benefit Pension Plan

During this round of collective bargaining, the Parties discussed various issues with respect to the application of the existing defined benefit pension plan. The Corporation commits as follows:

1. The Corporation will amend the plan to permit the employees to withdraw the commuted value of their pension until age 65 (lump sum option to age 65), effective January 1, 2014.
2. The Corporation will provide its consent to early retirement as set out in Appendix "A" hereto, for the life of the current Collective Agreement.
3. The Corporation agrees to maintain all other terms and conditions of the plan for the life of the current Collective Agreement for employees hired before January 1, 2015.

Dated at Montreal the 3rd day of June, 2015

Edward Houlihan
Director, Employee Relations

Roland Hackl
National Vice-President

Gilbert Sarazin
Senior Advisor Labour Relations

Jean-Michel Hallé
General Chairman

Wade Buckley
Manager Train Operations

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General Chairman

Bob Ermet

Vice-General Chairman

APPENDIX A

Not to form part of the Collective Agreement

June 3rd, 2015

RE: Early Retirement

The following is in regards to our agreement with respect to the above referenced matter.

1. VIA confirms it's undertaking not to deny consent to any unionized employee applying for early retirement as of 55 years of age or more, as in its ordinary course of practice for handling such applications. This commitment will remain in effect for the life of this current Collective Agreement
2. In the event of an alleged violation of this Memorandum of Agreement, Arbitrator M.G. Picher (or in the event of his unavailability, an Arbitrator selected by the parties, or failing agreement, an Arbitrator appointed by the Minister of Labour) shall have jurisdiction to enforce the terms of the Agreement by way of Arbitration conducted in accordance with the terms of the Arbitration Act (Ontario).

Signed this 3rd day of June 2015, in Montreal, Quebec.

On behalf of

VIA RAIL CANADA INC.

Edward Houlihan

Director, Employee Relations

On behalf of

Teamsters Canada Rail Conference

Roland Hackl

National Vice-President

Letter of Understanding – Not to form part of the Collective Agreement

Appendix “B”

Unsettled issues:

- Wages
- New pension for employees hired after December 31st, 2014

Appendix “C”

Terms of reference

Between

Teamsters Canada Rail Conference

(hereinafter referred to as the “TCRC”)

And

VIA Rail Canada Inc.

(hereinafter referred to as the “Corporation”)

Memorandum of Agreement

Whereas collective agreements 1.4 and 4.2 between the TCRC and the Corporation expired on December 31, 2014

And Whereas a conciliation officer was appointed to assist the parties on January 2nd, 2015.

And Whereas the parties have met and bargained diligently with the assistance of the conciliation officer in February, March, April and June of 2015.

And Whereas the parties have been unable to reach an agreement on all issues;

And Whereas the parties understand and agree that they will submit the remaining issues to binding interest mediation/arbitration to complete the agreement without a labour disruption

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS;

1. The parties agree pursuant to Section 79 of the *Canada Labour Code* (the "Code") to submit the outstanding issues to final and binding arbitration. They also acknowledge that pursuant to s. 79 (2) of the Code, the right to strike or lockout or make changes to working conditions is suspended and that they undertake to implement the award when rendered.
2. The terms and conditions of the collective agreements remain in force and the statutory freeze provisions will be respected until such time as the final award. The final award to be delivered no later than December 31st, 2015
3. The parties agree to a three- member arbitration panel with Michel Picher as the chair of the panel. There will be one nominee to the panel selected by the TCRC and one nominee selected by the Corporation. The arbitration panel will have, subject to the terms and restrictions herein, all the powers and responsibilities of an arbitrator under Sections 60 and 61 of the Code.
4. If Mr. Picher is unable or unwilling to accept the appointment within a reasonable time of the request, the parties will, upon notification from Mr. Picher, within 30 days mutually agree to a mediator/arbitrator. Should the parties not be able to agree, either party can apply to the Minister of Labour to appoint a chair of the arbitration panel within 14 days of the written request.

5. Upon finalization of the panel, the members and the chair will be provided with the recommendation of the conciliation officer, the agreed to items and these terms of reference.
6. The parties agree that there are two issues outstanding to be decided by the arbitration panel; wage increases for the term of the collective agreement and the Corporation's proposal for a new pension plan for employees hired after December 31, 2014.
7. The parties shall schedule a date for mediation, no more than fourteen days prior to the date for arbitration.
8. Thirty days prior to the first date scheduled for -mediation each party will deliver to the arbitration panel their written briefs outlining their proposal and arguments on the outstanding issues; wages for the duration of the agreement and the Corporation's proposal for a new pension plan for employees hired after December 31, 2014. The briefs shall contain proposed contract language, where applicable
9. Fourteen days prior to the first date scheduled for mediation the parties may submit a response to the brief submitted by the other party. Copies of the response must be submitted to the mediation/arbitration panel at the same time.
10. Proposals or responses submitted outside the time frame established above may not be considered by the mediation/arbitration panel and they must decide the outstanding issues accordingly.
11. The mediation/arbitration panel's decision will include the list of issues that have been resolved by the parties and the language revising the collective agreements where applicable.
12. The parties expressly agree that they will not initiate or support any process or proceeding before a court, tribunal or other body to review, challenge or prohibit the

appointment of the mediation/arbitration panel, the proceedings or the final decision or award.

13. Nothing herein shall preclude the parties from reaching an agreement on the outstanding issues prior to the issuance of the decision or award of the mediation/arbitration panel.

14. All costs incurred relating to the appointment and duties of the chair of the arbitration panel as well as the costs of the hearing shall be shared equally by the parties. Each party shall be solely responsible for all costs related to the appointment and attendance of their nominee to the mediation/arbitration panel.

Dated at Montreal the 3rd day of June, 2015

Ed Houlihan
Director Employee Relations

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National Vice-President

Gilbert Sarazin
Senior Advisor Labour Relations

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